

3-28-1966

# United States Steel Corporation Heavy Products Operations Johnson Works and United Steelworkers of America Local Union 1288

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## Recommended Citation

Garrett, Sylvester, "United States Steel Corporation Heavy Products Operations Johnson Works and United Steelworkers of America Local Union 1288" (1966). *Arbitration Cases*. 234.  
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BOARD OF ARBITRATION

Case No. USS-5351-H

March 28, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
HEAVY PRODUCTS OPERATIONS  
Johnstown Works

and

Grievance No. HJ-65-22

UNITED STEELWORKERS OF AMERICA  
Local Union No. 1288

Subject: Seniority; Entitlement  
to Overtime Turns.

Statement of the Grievance: "I, the undersigned Upper Shop employee, request to be paid for work performed by a pool employee on Sat., Apr. 10, 1965.

"Facts: On Fri. Apr., 9, 1965, a pool employee working in the Upper Shop Department was scheduled to report to work on the position of Material Handler for Sat. Apr. 10, 1965. The Material Handler position is not a pool job and as there were many Upper Shop employees available for this Saturday work, we feel that the Company has violated section 13F of the Labor Agreement."

This grievance was filed in the First Step of the grievance procedure April 16, 1965.

Contract Provisions Involved: Section 13-L of the April 6, 1962 Agreement, as amended June 29, 1963, and Sections 3 and 8 of the October 19, 1962 Local Seniority Agreement.

Statement of the Award: The grievance is denied.

BACKGROUND

Case No. USS-5351-H

In this grievance from the Upper Shop of Johnstown Works, Clifford McCreary protests the use of another employee to fill an overtime assignment as Material Handler (Class 4) on a turn when the scheduled incumbent was absent.

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The temporary vacancy as Material Handler arose on Saturday, April 10, 1965, because the regularly scheduled employee (Meyers) was off to see his doctor. An employee (McCabe) who was working as a Class 2 Laborer on a pool job that week was assigned to fill the vacancy. Grievant McCreary was a regular employee in the Seniority Unit who had worked Monday through Friday as a Hooker in Class 8. McCreary believes that he should have been given a sixth turn, at overtime, on Saturday in preference to McCabe. McCreary is a regular employee in the Upper Shop Seniority Unit, while McCabe worked in the Upper Shop on a Pool job under a Local Seniority Agreement negotiated October 19, 1962 in conforming with Section 13-L of the April 6, 1962 Basic Agreement.

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During the week in question, the involved employees worked as follows:

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| Name      | Turn | Job               | Job Class | Days |   |   |   |   |   |  |
|-----------|------|-------------------|-----------|------|---|---|---|---|---|--|
|           |      |                   |           | M    | T | W | T | F | S |  |
| Meyers    | 3-11 | Material Handler  | 4         | 8    | 8 | 8 | 0 | 8 | 0 |  |
| McCabe    | 3-11 | Laborer )         | 2         | 8    | 8 | 8 | - | 8 | - |  |
|           |      | Material Handler) | 4         | -    | - | - | 8 | - | 8 |  |
| *McCreary | 3-11 | Hooker            | 5         | 8    | 8 | 8 | 8 | 8 | 0 |  |

\* Grievant

Meyers originally was scheduled to work on Thursday of the week in question, but reported off sick and was replaced by McCabe. There was no grievance as to this assignment. Meyers returned to work on Friday and was instructed to report on Saturday, April 10. Meyers later requested Saturday off

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because of a doctor's appointment, and once again he was replaced by McCabe. McCreary's claim for this overtime assignment in part rests on an assertion that any qualified senior Upper Shop employees must be given preference for overtime work assignments ahead of any Pool employees who may be working in the unit. The Union seems to believe there is support for this view in Section 13-F of the Basic Agreement and also that an established local working condition is applicable in this particular Seniority Unit. The Union also asserts that the Material Handler job was designated as a "closed job" for all purposes, when the parties negotiated their Local Agreement. No definition is provided as to the term "closed job." The Union believes that whenever an overtime turn occurs on such a job, Management must offer it "to the most senior employee in the shop on that turn," who is qualified and, says the Union, Management is required to use "the most senior employee who accepts the assignment." Finally, the Union insists that employees on Pool jobs have no right to work any overtime on "a closed job" in any given seniority unit.

To support its claim of established practice, the Union cites instances involving incumbents of two jobs in Classes 11 and 10 (Planer and Lathe Operators) who are assigned to work overtime turns on the Shaper, at Class 9, rather than moving up other employees under Section 13-F to fill such temporary assignments at overtime. The Union also stresses that Employee Logar worked 1269.5 hours as a Painter in Job Class 5 during 1965 and 921 hours as a Stenciller in Job Class 4 during the same year. Of this total, close to 350 hours were overtime. In the Union view, this method of using Logar to fill two jobs illustrates that employees within a Seniority Unit must be demoted to fill overtime assignments (if they desire) in preference to using employees on Pool jobs in the given department.

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The Company feels that the assignment of a Class 2 Laborer from a Pool job to fill in temporarily as a Material Handler in Class 4 was entirely proper, since there was no employee with unit seniority who was on a job below the Class 4

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level. In these circumstances says the Company there could be no violation of Section 13-F. Indeed the Company deems the use of McCabe as entirely consistent with the purpose of Section 13-F, and in conformity with normal procedures whereby Pool employees move upward to fill day-to-day vacancies on seniority unit jobs and as vacation replacements. The Company can find nothing in the Local Seniority Agreement, nor in any relevant local working condition to support grievant's claim to fill the overtime assignment here in issue. According to the Company the only definable overtime assignment practice which might apply broadly in the Upper Shop recognizes that regular incumbents of a job on a given turn, and in a given work area, may be given first opportunity to work overtime when such is required on the given turn and in the location to which they are assigned. No regular incumbent of the Material Handler job is involved here, so that any such practice would be inapplicable here.

#### FINDINGS

Before reaching arbitration both parties placed their primary reliance upon Section 13-F, dealing with the filling of temporary vacancies in such manner as to assist longer service employees "to become qualified for permanent promotion." Since grievant here was seeking a demotion for one turn, and already was qualified to fill the Material Handler job, it is manifest that Section 13-F provides no support for his claim. 7

At the hearing, therefore, the Union largely rested its weight on two other contentions: (1) that Pool employees have no right to be assigned to work overtime on jobs above pool level in any given unit, and (2) that an established practice requires that any such overtime turn must be offered first to the "most senior employee in the shop on that turn" and so on down the line until the assignment is accepted. 8

As to the first of these contentions it may be said briefly that it finds no support in either Section 13-L of the Basic Agreement or in the October 19, 1962 Local Agreement. These points are fully covered in the Opinion in Case USS-5353-H, presenting a related problem from Johnstown Works, and the analysis in that Opinion need not be repeated here. Since Pool employees almost inevitably must be used from time to time to fill temporary vacancies above the pool level, it seems impossible to differentiate, or treat separately, all overtime hours involved in filling such temporary vacancies.

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As to the claimed practice, the Union witness first asserted that such overtime turns always were offered to the "most senior" employee in the Shop, and so on down the seniority list until the most senior employee who desired the work accepted the assignment. The Union witness explained that such an offer need be made only to a "senior" employee who earlier had filled the specific job in question or "could hold it through downgrading." He asserted that everyone above Class 4 level in the Upper Shop was entitled to fill the Material Handler job by demoting.

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If such a practice in these terms actually existed, of course, then the "most senior" employees could - if they desired - assert claims to most of the overtime assignments. When this was noted in later questioning, the Union witness indicated that an effort was made to "move on down the list as each turn comes up" in an effort to distribute the overtime on a relatively equal basis. On later cross-examination, he indicated that the practice he had in mind was limited to offering the extra (overtime) turn to employees who were assigned to the particular shift which would work overtime. The witness indicated, moreover, that pool employees may have worked overtime turns on jobs above the pool level in emergencies, or when a regular incumbent unexpectedly failed to report.

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It is clear that when the present grievance arose there was no agreement between the parties - written or oral - along the lines suggested by the Union witness. The Company

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witness (General Foreman Lehman) flatly denied the existence of any such practice as claimed, but indicated that after the present grievance had arisen he began to make some effort to give overtime assignments to the "oldest man" qualified "when-ever possible." In practice, however, men operating a given machine on a given turn still are used to fill an overtime turn where required on such machine at the end of the week. Likewise, Cranemen and Hookers, working in a particular bay, may be used for the extra turn at overtime where required in that location.

The only specific Union evidence to illustrate its claimed practice related to the Shaper and Stenciler jobs. The evidence shows that both of these situations involved special circumstances not generally applicable to other jobs in the seniority unit: (1) No one on jobs below the Shaper Operator in Class 9 was qualified to operate the Shaper (which is used only occasionally) and no one is regularly assigned to the Shaper; (2) no one is scheduled for the Stenciler job as such since the work is closely related to Spray Painting and there is not enough stencilling to constitute a full-time job; one man normally does all the stencilling and spray paints during the rest of his working time - in effect he is scheduled to handle both work assignments.

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The practices as to these two jobs thus actually are different and each relates to the circumstances peculiar to the given job. The two practices cannot reasonably be combined and then stretched to constitute a "practice" applicable to all jobs in the Upper Shop seniority unit. Thus in balance, it appears that the Union evidence fails to establish a controlling practice under which all incumbents of jobs above the Class 4 level in the Upper Shop seniority unit are entitled, in order of seniority, to an option to demote into the Material Handler job to fill an overtime turn before any pool employee can be assigned for this purpose. No regular incumbent of the Material Handler job is involved here.

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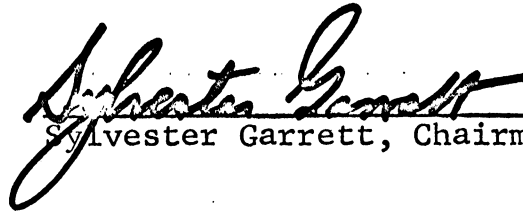
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AWARD

The grievance is denied.

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BOARD OF ARBITRATION

  
Sylvester Garrett, Chairman