3-28-1966

United States Steel Corporation Heavy Products Gary Steel Works and United Steelworkers of America Local Union 1014

Sylvester Garrett

BOARD OF ARBITRATION

Case No. USS-5365-H

March 28, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS
Gary Steel Works

and

Grievance Nos. A-60-176
A-61-70

UNITED STEELWORKERS OF AMERICA
Local Union No. 1014

Subject: Seniority - Distribution of Work

Statement of the Grievance: Grievance A-60-176

"We, the undersigned, on behalf of all other employees working in the Blast Furnace Department at #3 Sintering Plant, contend that Management is in violation of the January 4, 1960 Labor Agreement and the Local Agreement dated July 9, 1945, by laying us off and working employees with less unit seniority than us as Laborers. Therefore we request that this condition be rectified and that we be paid for all loss in earnings.

This grievance was filed in the Second Step of the grievance procedure November 16, 1960.

Grievance A-61-70

We, the undersigned employees working in the Blast Furnace at #3 Sintering Plant, contend that management is in violation of the January 4, 1960 Labor Agreement by scheduling us three (3) days the week of March 5 thru March 11, 1961, and working employees with less seniority than us four (4) days, therefore we request that this condition be rectified and discontinued and that we be paid for all loss in earnings."

This grievance was filed in the Second Step of the grievance procedure March 30, 1961.

Contract Provision Involved: Sections 1, 2-B, and 13-A and G of the Basic Labor Agreement dated January 4, 1960 and the Local Seniority Agreement dated July 9, 1945.

Statement of the Award: The grievances are denied.

BACKGROUND Case No. USS-5365-H

In these grievances from the No. 3 Sintering Plant, Blast Furnace Division, Gary Steel Works, the Union contends that Management violated Section 1, 2-B, and 13-A and G of the Basic Labor Agreement dated January 4, 1960 and the Local Seniority Agreement dated July 9, 1945 in failing on two separate occasions to provide grievants with 32 hours of work per week while employees with less seniority worked at least 32 hours during the weeks in question. Grievance No. A-60-176 was filed by 8 employees and Grievance No. A-61-70 by 24 employees. 1

The grievants, assigned at the times in question as Laborers at the No. 3 Sintering Plant, were part of the Furnace Seniority Unit which included not only the employees assigned to the Blast Furnace Department but also those in the Sintering Department. As laborers they were also part of the plant wide labor pool. 2

The instance complained of in Grievance No. A-60-176 occurred during the week beginning October 23, 1960. The grievants were scheduled to work 32 hours during that week but on Tuesday, October 25 the Induced Draft Fan of the No. 1 Sintering machine (one of three machines in the No. 3 Sintering Plant) unexpectedly began vibrating so excessively that Management decided it should be replaced immediately. In order to do so, it was necessary to cease operating the machine in question and faced with this temporary decrease in available work, Management reassigned operating personnel on that machine to other jobs in the Sintering Department in accordance with their seniority. However, Management cancelled the laborer's schedules for the remainder of that week, the time it took to repair the fan. Those laborers that reported to work on the turn following the breakdown received reporting allowance under Section 10-E and were released. Others were informed by telephone not to report for work. This action resulted in all of the grievants except Geifen working only 12 to 24 hours during that week although laborers in the Blast Furnace 3

Department and in the plant wide labor pool with less seniority than the grievants continued to work 32 hours.

4 The events leading to Grievance No. A-61-70 began the latter part of February 1961 when Management decided to replace the Induced Draft Fan on the No. 2 machine of the No. 3 Sintering Plant. This repair job was scheduled for the week beginning March 5 and therefore Management was able to plan the shut down in advance and schedule employees accordingly. Thus the operating personnel in the Sintering Department were scheduled for a four, rather than five, day week and the approximately 118 laborers at the Sintering Plant were reduced to three days for that week. This schedule was in effect for only the one week necessary to perform the needed repair on the No. 2 machine. As on the previous occasion, less senior laborers in the same seniority unit but at the blast furnaces and the laborers in the other areas of the plant continued to work at least 32 hours during that week.

5 The Union contends that on both occasions Management's action was contrary to local past practices in that seniority unit. It is said that in the past when there had been breakdowns requiring the shut down of the plant for one week all of the employees, including operating personnel, had been encouraged to take vacations and the balance had been scheduled to labor jobs in the same department or at locations throughout the plant without any reduction below 32 hours a week. However, on the occasions in question, Management refused to take this action.

6 The Company witness agreed that this procedure had been followed at times in the past but only when there was sufficient clean up work available whereby those employees desiring to work could be absorbed. It was pointed out that at the times in question the level of operations was curtailed to the extent that only five or six blast furnaces out of twelve in the department were in operation. Further testimony was adduced indicating that on a number of occasions, operating personnel has worked five days per week while laborers have been reduced to four days per

week with no objections by the Union. The Company agrees that it has not often found it necessary to reduce hours below 32 but states that on two specific occasions, other than those grieved herein, the Sintering Plant laborers were reduced to three days per week while the operating personnel were reduced only to four days. One of these occasions, of which the Union denies any knowledge, occurred on October 9, 1960 when a fire at the Sintering Plant resulted in a reduced work force for one week while the equipment was repaired. The other occasions occurred some time after the instant grievances were filed.

The Union also contends that under Section 13-G 7
of the Labor Agreement Management may not reduce any employee's hours to less than 32 hours per week and if there is not sufficient work available and the Union does not agree to a reduction in the work week below 32 hours Management must reduce forces in accordance with Section 13-A and the Local Seniority Agreement. The Union stresses the fact that only the laborers in the Sintering Department were reduced in the number of hours while the laborers at the Blast Furnace in the same seniority unit and the other laborers throughout the plant with less seniority than the grievants continued to work at least 32 hours per week. Thus it is urged that the grievants were, in effect, furloughed or laid-off on the weeks in question in violation of their seniority rights.

The Company takes the position that the Union 8
has not proven the existence of any past practice. It further points out during the week of October 23 the 628 employees in the seniority unit worked an average of 32.78 hours and during the relevant week in March, 1961, 563 employees in the seniority unit worked an average of 31.11 hours. In view of these facts and since on neither occasion did it appear the decrease in work would continue for any extended period of time, it is urged that Management acted properly under Section 13-G and that under the circumstances it was not incumbent upon Management to either effect a general force reduction or disperse the employees throughout the plant. It is said that either of these procedures would have been

impractical under the circumstances then prevailing. It is further contended that the Union is attempting to read into Section 13-G a guarantee of work which is not contemplated by that section of the Agreement.

FINDINGS

Since its decision in Case No. N-146, the Board has required that the party relying on an alleged practice or custom present sufficiently clear evidence regarding the background of such a practice, including illustrations of its use, to justify the Board in making a finding in the matter. The evidence must support a conclusion that the practice relied upon has become the "normal reaction to a recurring type situation" and in response to a "given set of underlying circumstances." 9

In the instant case, the Union has merely asserted that in the past when the Sintering Plant was shut down for repairs the employees, including the operating personnel, have been distributed throughout the plant on the basis of their seniority. No evidence of any specific implementation of this practice was presented nor is it clear whether such a distribution of personnel ever occurred when operations were at as low a level as at the times in question. Thus it may be that the references made by the Union are to instances admitted by the Company when the entire Sintering Plant was closed for periods of time and Management was able to find work for all of the affected employees in other areas of the plant. 10

Moreover, on two specific instances laborers at the Sintering Plant have been reduced to less than 32 hours per week as in the instant case and there is substantial evidence that in the past Management has scheduled laborers in the Sintering Plant to four days per week while the operating personnel continued to work on a five day basis. While this evidence does not itself establish a practice contrary to that alleged by the Union, it does cast doubt on the Union's contention that a uniform practice of work distribution 11

throughout the plant has been in effect. Thus the evidence presented in this case does not establish that Management in these two instances acted contrary to a well defined local past practice.

It is urged, however, that absent agreement by the Union, Management may not reduce an employee to less than 32 hours per week on any occasion and if work is not available for all employees for 32 hours per week then a reduction in force must be implemented in accordance with Section 13-A and the Local Seniority Agreement. The relevant contractual provisions of the January 4, 1960 Agreement read as follows: 12

"SECTION 13 - SENIORITY

A. Seniority Status of Employees

The parties recognize that promotional opportunity and job security in event of promotions, decrease of forces, and recalls after layoffs should increase in proportion to length of continuous service, and that in the administration of this Section the intent will be that wherever practicable full consideration shall be given continuous service in such cases.

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G. Decrease of Force

In the event a decrease of work, other than decreases which may occur from day to day, results in the reduction to an average of 32 hours per week for the

> employees in the seniority unit and a further decrease of work appears imminent, which in the Company's judgment may continue for an extended period and will necessitate a decrease of force or a reduction in hours worked for such employees below an average of 32 hours per week, the Management of the plant and the grievance committee will confer in an attempt to agree as to whether a decrease of force shall be effected in accordance with this Section or the available hours of work shall be distributed as equally between such employees as is practicable with due regard for the particular skills and abilities required to perform the available work. In the event of disagreement, Management shall not divide the work on a basis of less than 32 hours per week."

The Union also alleges violation of the following provision of Section II of the Local Seniority Agreement dated July 9, 1945.

> "When an individual has been demoted to the labor level in any unit, he shall be considered to hold seniority in the entire plant (including all units), and shall be laid-off in accordance with his total continuous service in the entire plant as a single unit."

The Union's argument that the last sentence of Section 13-G requires the employment of employees for a minimum of 32 hours per week has been determined to the contrary by the Board in Cases No. USC-728 et al where it discussed the effect of Section 13-G as follows: 13

> "It should be clear at the outset that Section 13-G does not establish a rigid floor of 32 hours work for each employee every week. Section 13-G deals in broad terms with situations where decreases of work, other than those which may occur from day to day, result in the employees in a seniority unit receiving only an average of 32 hours per week.
>
> "Once the 32-hour average point is reached, moreover, it also must appear that a further decrease of work is imminent which 'in the Company's judgment may continue for an extended period,' so as to necessitate a reduction of force, or an average of less than 32 hours worked per week. In such a situation it is contemplated that the parties locally then will confer to determine whether there shall be a force reduction, or agreement to distribute the available work as equally as is practical.
>
> In the event of disagreement, the work shall not be divided 'on a basis of less than 32 hours per week.' Again, this language does not establish a rigid floor applicable to each employee in each week, but rather recognizes that the basis for dividing the work shall be no less than 32 hours per week."

During the week of October 23, 1960, the employees in the Furnaces seniority unit worked an average of 32 hours and the reduction in available work caused by the breakdown of the Induced Draft Fan could not reasonably have been expected to continue for any extended period of time and in fact lasted only for 80 hours. Nor can the shut down of the No. 2 machine for one week beginning March 5, 1961 for the repair of a similar fan be construed as an extended period of time. Therefore in each instance grieved the necessary conditions were not present whereby under the provisions of Section 13-G Management was prohibited from dividing the work on a basis of less than 32 hours per week. 14

The Union's contention that the seniority rights of the grievants under Section 13-A were violated must be viewed in light of the Board's decision in Case No. N-191 which states in relevant part: 15

> "...the application of Section 13-A-2 must be made in each case in the light of the specific declaration of the parties in Section 13-A, Marginal Paragraph 207: '...that in the administration of this Section the intent will be that wherever practicable full consideration shall be given continuous service.' In this way the parties have recognized that a literal application of the provisions of Section 13-A-1 and -2 will not always be possible where emergency conditions exist, even though - as in the present case - a substantial decrease in forces is necessitated by such emergency situation."

In the same decision the Board also considered the application of the Local Seniority Agreement under these circumstances as follows: 16

> "On its face, the local Agreement is designed to implement, and not to supplant, the seniority provisions of the Agreement. As such, it does not negate the applicability of the first paragraph of Section 13 of the Agreement."

17 The reduction of hours during the week beginning October 23, 1960 clearly resulted from the unforeseen breakdown of the fan on the No. 1 Sintering Machine requiring the immediate shut down of that machine for a relatively short period of time. It appears that the grievants were scheduled and worked at least 32 hours during the week immediately preceding and subsequent to the week in question. Thus under these particular circumstances the reduction of hours suffered by the grievants in Grievance No. A-60-176 must be viewed as resulting from an emergency, a situation under which it would not be "practicable" for Management to comply with the provisions of Section 13-A.

18 The March 1961 situation differs in that Management was able to plan the one week shut down for repairs and scheduled all of the Sintering Plant laborers for 3 days during that week. This, in effect, amounted to dividing or distributing the available work among the laborers in the Sintering Department for that one week. Thus the provisions of Section 13-A and of the Local Seniority Agreement which apply to reductions in force are not applicable to this situation. Although this procedure deprived these employees of one day of work vis-a-vis the operating personnel and the other laborers in the plant who worked 32 hours that week, it was different only in degree from the occasions in the past when operating personnel worked five days a week while laborers were limited to only four days. The fact that the Union never protested this arrangement reflects its belief that Section 13-G establishes a minimum guarantee of 32 hours per week for each employee. This interpretation has been rejected by the Board. Moreover, the March reduction in work was not of a nature calling for the

implementation of Section 13-G and therefore in the absence of any other contractual provision prohibiting Management from dividing the available work on the basis of less than 32 hours a week, it cannot be said under these circumstances that the scheduling protested in Grievance No. A-61-70 was unreasonable.

AWARD

The grievances are 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