3-23-1966

United States Steel Corporation Heavy Products Operations Homestead Districts Works and United Steelworkers of America Local Union 1397

Sylvester Garrett

BOARD OF ARBITRATION

Case Nos. USS-5419-H;
USS-5421-H

March 23, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Homestead District Works

and

Grievance Nos. HH-65-89;
HH-65-111

UNITED STEELWORKERS OF AMERICA
Local Union 1397

Subject: Assignment of Work - Seniority

Statement of the Grievance: Grievance No. HH-65-89 (USS-5419-H)

"I, E. Goral, request that Management place me back on my job, before the re-opening of O.H. #4."

Facts: "I, E. Goral, also state that I was working five (5) days as a Hot Metal Buggie Operator now I am working on 3 days as operator and 3 days as Pipefitter Helper. I don't think that it is right of working a split schedule when the work is picking up."

Remedy Requested: "Put grievant back on job that he had before re-opening of O. H. #4."

This grievance was filed in the First Step of the grievance procedure June 25, 1965.

Statement of the Grievance: Grievance No. HH-65-111 (USS-5421-H)

"I, C. McDonald, Jr., #42207, request I be placed on my regular job, Pump Tender, O.H. #5, Pump House also be paid all lost wages due to me being demoted from Job Class #8 to Job Class # 6, 3 days per week."

Facts: "Company has no right to demote me 3 days per week. I have a bid job, Class # 8. Additional information will be presented."

Remedy Requested: "Place grievant on his rightful job. Pump Tender, 40 hours per week."

This grievance was filed in the First Step of the grievance procedure June 28, 1965.

Contract Provision Involved: Sections 1, 6 and 13 of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of the Award: The grievances are denied.

BACKGROUND Case Nos. USS-5419-H; USS-5421-H

These grievances from the No. 5 Open Hearth Shop of the Open Hearth Division, Homestead Works, claim that Management's action in scheduling the grievants to work three days per week on other than their regular jobs while employees with less job seniority continued to work regularly on the jobs normally assigned to the grievants violates Sections 1, 6, and 13 of the April 6, 1962 Agreement, as amended June 29, 1963. 1

In and around June 1965, a shortage of Open Hearth steel developed due to operational difficulties with the basic oxygen furnace at the Duquesne Plant and compounded by the general upsurge in demand for steel at that time. Consequently Homestead Works management was instructed to reactivate the No. 4 Open Hearth Shop, which had not been operated since June 30, 1963. Pursuant to a Local Seniority Agreement with the Union, Management found it necessary in reopening the No. 4 Shop to take personnel having seniority rights at that Shop out of the No. 5 Shop. This resulted in a manning problem at the No. 5 Shop which continued from June 20, 1965 through September 4, 1965, when the No. 4 Shop was again shut down. Therefore Management found it necessary in order to obtain greater utilization of the available manpower to schedule all crews at No. 5 Shop for six days per week, in contrast to the normal five day week scheduling. 2

Grievant Gorol had been a Transfer Car Operator (Job Class 6) since he had successfully bid on that job on April 18, 1951 and was the most senior of the four regular incumbents on that job. Prior to June 1965 the four Transfer Car Operators each worked five days per week thus handling 20 turns per week with the 21st turn being filled by a Swipe Man. When the Company found it necessary to work each man for six turns per week, three Transfer Car Operators worked 18 of the 21 turns whereas the fourth Transfer Car Operator would only have three turns available for him at that job, thus making this employee available to fill other vacancies for three turns per week. 3

Similarly, Grievant McDonald was one of four regular incumbents on the Pump Tender Fuel crew and was the second most senior man on that job. As in the case of the Transfer Car Operator, the change to a six day per week schedule for each man required the transfer of one of the 4

four man crew to a job or jobs other than that of Pump Tender Fuel.

On June 20, 1965, Management selected Grievant Gorol and Grievant McDonald, respectively, as the fourth man in each of their crews who would be transferred to other jobs. Although each of them were scheduled for 3 turns at their regular job and the remaining 3 turns for each week at some other job, the two grievants were not in fact assigned in accordance with their weekly schedules, and they filled the 60 turns during the period between June 20, 1965 and September 4, 1965 as follows: 5

	Job Class	Turns
Gorol		
Transfer Car Operator	6	39
Motor Inspector Helper	6	10
Millwright Helper	6	5
Mould Prep. Crane Operator	7	3
Hot Top Crane Operator	7	3
McDonald		
Pump Tender Fuel	7	47
Motor Inspector Helper	6	8
Millwright Helper	6	4
Absent - 1 turn		

Since September 4, 1964 Grievants Gorol and McDonald have worked full time as Transfer Car Operator and Pump Tender Fuel respectively. In each case the Company paid the grievants a special allowance to the extent it was necessary to bring their compensation up to that they would have received if they worked 6 days per week in their respective regular jobs. 6

While recognizing that no monetary loss is involved in the instant case, the Union contends that each grievant after bidding on his regular job is entitled to retain their incumbency in that job in accordance with their seniority. It argues that the assignments to other jobs cannot be considered temporary under Section 9-J-3 inasmuch 7

as they extended over a period of 2½ months and were made upon a weekly scheduled basis.

The Company initially contended that both the jobs involved were jobs set aside by agreement with the Union to which employees with physical handicaps rendering them unfit for other jobs could be assigned and that in each case the less senior incumbents of the jobs in question had some disability which rendered them unfit for other work. In the Fourth Step of the grievance procedure and thereafter, however, the Company appears to place less reliance upon this argument. It now agrees that, although the assignment of the less senior employees to both the Transfer Car Operation and the Pump Tender Fuel Operation was made primarily because of the disabilities of those employees, this gave these individuals no "super-seniority" on the jobs and that the grievants herein have been fully accorded their job seniority. It is said, however, that the relative disability of these less senior incumbents is relevant in the case inasmuch as this fact renders the grievants more capable than they of performing other jobs when not needed on their regular jobs. Primarily the Company relies upon its right to temporarily transfer employees under Section 9-J-3 of the Labor Agreement provided it grants to the employees involved, as it did in the instant case, the special allowance necessary to bring the earnings of the transferred employees up to that which they would have otherwise realized. The Company also argues that the instant case is moot inasmuch as the grievants suffered no loss of pay and since September 4, 1965 have been fully employed at their regular jobs. 8

FINDINGS 9

The record is clear that in making the original assignments in question, Management relied upon an alleged agreement under marginal paragraph 209A of the Agreement, whereby the jobs of Transfer Car Operator and Pump Tender Fuel were set aside out of promotional sequence to be assigned to physically handicapped employees, and for this reason assigned the grievants to other than their regular jobs on the ground that they were more capable of performing the work than the less senior incumbents on the crews

in question. Whatever may be the agreement between the parties in this connection this fact does not appear to be determinative in the instant case inasmuch as the Company admits that the incumbents of the Transfer Car Operator and Pump Tender Fuel jobs with less job seniority than the grievants derived no "super-seniority" by virtue of allegedly obtaining the jobs under the marginal paragraph 209A Agreement.

The Union relies upon Section A-1(a) of the Local Seniority Agreement which states in relevant part: 10

> "...an employee first placed regularly on a given job in a promotional sequence in a unit shall be the first employee promoted from that job in that promotional sequence in that unit, provided of course, that the factors of ability and physical fitness are relatively equal; or, when any required displacement results within a promotional sequence in a given unit, the individual last placed on a given job shall be the first individual displaced from that job.
>
> For example: provided ability and physical fitness are relatively equal, employees will be promoted from Laborer to Third Helper in Open Hearth No. 5 on the basis of Job Seniority in the Labor job in Open Hearth No. 5. Further, in selecting an employee for a Second Helper vacancy, if ability and physical fitness are relatively equal, the incumbent of the Third Helper job who has the greatest Third Helper job seniority, and who bids for the job, will be the first employee selected for that promotion. Under reduced operations in Open Hearth No. 5,

> the last individual placed on the Second Helper job would be the first to be moved back to Third Helper, and the last Third Helper removed to Labor within the Open Hearth No. 5 sequence only."

Under this language the Union argues that when Management scheduled the employees on a six turn per week basis this in effect amounted to the "displacement" of an employee on each crew in question within the meaning of the above section and therefore the least senior employee should have been reassigned.

This contention of the Union must be viewed in the context of the situation existing at the time in question. It is clear that while the schedules and assignments in question had the effect of displacing an employee from his job for three days per week, it was designed by the Company to obtain a greater utilization of manpower at a time when a decided shortage of employees existed. At no time was the employment security of the grievants placed in jeopardy, and at all times Management treated the reassignments in question as temporary transfers under Section 9-J-3. 11

The right of Management to transfer employees at least on a temporary basis had been well settled by Board decisions. Thus in Case No. USC-311, the Board stated that a section of the Agreement equivalent to the present Section 9-J-3 "indirectly reflects a recognition that Management from time to time would find it necessary to transfer employees temporarily from their regular jobs." In fact the Union itself appears to agree that Section A-1(a) of the Local Seniority Agreement would not bar management from making temporary transfers but contends that the instant reassignments were not temporary in nature. 12

Thus the true issue in the instant case appears to be whether the assignments in question were temporary as contended by the Company or permanent as contended by the Union. 13

The Union cites as determinative of this issue 14
Section I-2(a) of the Local Seniority Agreement which reads as follows:

> "2. Service on a job shall date from the time of regular and permanent assignment to that job, and no job service credit shall be recognized for temporary service on a job, except as defined in Section I-2-b:
>
> a. 'Temporary service on job' refers to non-permanent assignments which are due to day-to-day absenteeism, leaves of absence, sickness, and vacations, which at the discretion of Management, shall be filled by employees on the same turn on which the vacancy arises, in accordance with Section 13 - Seniority, except as otherwise defined in Section I-2-b."

and argues that since the instant assignments were not due to day-to-day absenteeism, leaves of absences, sickness, or vacations, they were outside the definition of temporary and must be considered permanent.

The cited language, however, on its face does not 15
purport to give an exhaustive list of the reasons for which temporary assignments may be made. The use of the words "non-permanent assignments" clearly indicates that there are contemplated other reasons than those stated for which temporary assignments can be made. Moreover, Section I-2(a) is limited to a definition of the type of service on a job for which no job service credit would be recognized.

Thus, there being no definitive agreement by the 16
local parties defining a temporary assignment for purposes of Section 9-J-3, the Board must evaluate all of the relevant factors in determining whether these particular assignments can reasonably be construed as temporary under this Section.

The evidence indicates that the decision to open 17
No. 4 Open Hearth Shop, thus resulting in the displacement of needed employees from No. 5 Shop, was not a planned move but a sudden determination arrived at by Management because of the operational difficulties with the basic oxygen furnace at the Duquesne Plant compounded by the general upsurge in demand for steel at that particular time. Undenied testimony indicates that the Union was informed by Management that this situation would last for only a couple of months and at least one of the grievants was told that his assignment to other jobs would be only a temporary arrangement. Moreover, although during the period in question the grievants were scheduled for three days on their regular jobs and for three days on other jobs, this in itself does not render the assignment permanent, particularly in view of the fact they actually were assigned to their regular jobs for the majority of turns in question.

For instance, Grievant McDonald worked only 15 out 18
of 59 turns at jobs other than his regular job. Out of 60 turns worked during the same period, Grievant Gorol worked only 21 turns at other than his regular job, was never assigned to any job lower than Job Class 6, the classification of Transfer Car Operator, and in fact he was assigned for six turns at Job Class 7, Crane Operator job.

In view of these particular circumstances it cannot 19
be concluded that either the situation giving rise to the assignments in question or the assignments themselves was of a permanent nature, and therefore, the Company did not act unreasonably, in this particular case, in reassigning the grievants to other than their regular jobs under the provisions of Section 9-J-3. There is nothing in the Agreement requiring Management, in the selection of an employee to be temporarily assigned under Section 9-J-3, to designate the shortest service incumbent of the job from which the assignment is made.

Accordingly the grievances are denied. 20

AWARD

The grievances are denied. 21

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

By Lvester Garrett, Chairman