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BOARD OF ARBITRATION

Case No. USS-4864-S

June 4, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Irvin Works

and

Grievance No. A-64-41

UNITED STEELWORKERS OF AMERICA
Local Union No. 2227

Subject: Scheduling "Wild" Week of Vacation.

Statement of the Grievance: "Union protests Management's scheduling of employees for the so-called wild week of vacation by restricting it to the first quarter.

"Facts: Management is scheduling the employees for this vacation during the first quarter and eliminating the rest of the year. Management is also scheduling employees prior to their anniversary date. This has deprived employees of their rights under Section 12.

"Remedy Requested: Management schedule vacations as outlined in the Labor Agreement and provide the older employee with their benefits.

This grievance was filed in the First Step of the grievance procedure January 30, 1964.

Contract Provisions Involved: Sections 12-C-1 and -2 of
the April 6, 1962 Agreement, as amended June
29, 1963.

Statement of the Award: The grievance is sustained,
and Management shall pay grievant one week's
vacation pay at the rate provided in Section
12-E as if he had gone on vacation the week
beginning December 6, 1964, according to his
preference.

BACKGROUND

Case No. USS-4864-S

This grievance from the Central Maintenance Department of Irvin Works claims violation of Section 12-C-1 of the April 6, 1962 Agreement, as amended June 29, 1963, in Management's requiring grievant to take his so-called "wild" week of vacation in April of 1964.

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Pertinent provisions of 12-C-1 and -2 read as follows:

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Section 12-C-1

"Ninety days prior to the beginning of the vacation scheduling period, each eligible employee shall be requested to specify the vacation period he desires. Vacations will, so far as practicable, be granted at times most desired by employees (longer service employees being given preference as to choice); but the final right to allot vacation periods and to change such allotments is exclusively reserved to the Company in order to insure the orderly operation of the plants. Vacations, upon agreement between local plant management and the local Union grievance committee, shall be scheduled throughout the calendar year. Accordingly, the grievance committee shall meet with local management at each plant, no later than August 31, 1963, for the purpose of negotiating the vacation scheduling period, giving particular consideration to the desirability of increasing the vacation scheduling period, in order to accommodate the increased vacation benefits provided under this Section and Section 17. In the absence of such mutual agreement, vacations, except as provided in Subsection C-2 below and in Section 17 - Savings and Vacation Plan, shall be scheduled between

"May 1 and October 1 of each calendar year or, with the consent of the employee, at such other time during the calendar year as may be agreeable to the plant management and the employee."

Section 12-C-2

"One week of vacation, provided for under Subsection B-1 above, for an employee having 10 but less than 15 years, or having 25 years or more of continuous service, may be scheduled by Management at any time during the calendar year, or if the employee agrees he may be given vacation allowance in lieu of such vacation week. If such a week of vacation is scheduled outside the period set forth in the foregoing Paragraph 1 the employee, upon request and if operating conditions permit, shall have the right to have one or more other weeks of vacation to which he is entitled scheduled with such week. This paragraph is intended to remove the limitation of scheduling vacation to certain portions of the year which is applicable to other weeks of vacation and not to affect the application of other rules concerning the scheduling of vacations set forth in this Section."

Grievant had over 25 years' continuous service and thus was entitled to four weeks' vacation in 1964 under 12-B-1. 3

Grievant is an avid hunter and thus requested that he be given two weeks' vacation in late November and early December during the deer-hunting season. For reasons which 4

will be explored later, Management decided that all Irvin "wild" weeks would have to be scheduled in the first four months of 1964, and grievant's was scheduled in April of that year under authority of 12-C-2, over his objection. The term "wild" week has gained currency as describing the one week of regular vacation which Management may schedule, under 12-C-2, outside the regular May 1-October 1 period.

In Step 4 on May 6, Management indicated that in order to accommodate grievant's preference to the greatest extent practicable, it was willing to schedule part of his vacation in the latter portion of the year. It is said that this was possible because it would subtract an equivalent amount of vacation time from the heavy vacation liability which inevitably falls in the May 1-October 1 period. After the May 6 Step 4 meeting, Management offered grievant the opportunity of taking two of his three remaining vacation weeks during the deer-hunting season in November and December. In fact, however, grievant took two of his three remaining weeks of vacation in June and his final week beginning November 29, 1964, during the deer season.

The Company stresses that its 1964 vacation liability, because of the advent of extended vacations, was considerably greater than it had been in 1963. It is said that this interfered with its accommodating employee preferences to the same extent as it had been able to do in 1963.

Early in 1964 plant Personnel Services noted that Irvin Works would go from a total P&M 1963 vacation liability of, in round numbers, 10,000 weeks of vacation, to a 1964 load of approximately 15,000 weeks, including both regular and extended vacations. Personnel Services anticipated also, on the basis of operating forecasts, that the plant would move from a comparatively low level of operations in the beginning of the year, with approximately 900 P&M employees on layoff, to gradually higher levels throughout the year. It was assumed also by Personnel Services that on the basis of past experience regular vacation preferences would peak during the summer months in the

May 1-October 1 period and that, to the extent that employees would consent to regular vacations outside the normal five-month period, they (along with extended vacations) would be heavier in the latter part of the year than in the first few months.

With those thoughts in mind and in order to secure a uniform discharge of vacation liability in all months throughout the year, Personnel Services recommended to all departments on a plant-wide basis that all "wild" weeks, which could be scheduled throughout the entire year, should be scheduled during the first four months.

That recommendation was applied on a plant-wide basis so that all Irvin "wild" weeks of vacation were scheduled in the first four months of 1964.

The Central Maintenance Department, with about 500 employees, was faced with approximately 1800 weeks of all types of vacations in 1964. Central Maintenance anticipated that regular vacations would peak in the May 1-October 1 period, and that both extended and regular vacations, to the extent that the latter would fall outside the normal five-month period, would be heavier in the latter part of the year than in the first part. Therefore, on the basis of the same consideration as had been employed at the plant level by Personnel Services, all Central Maintenance "wild" weeks were confined to the first third of 1964, the goal being an even distribution of vacations throughout the year.

That policy then was applied by the General Foreman in the many units of Central Maintenance, so that "wild" week preferences of senior employees were considered as to when they could go on vacation in the first four months.

Management says that development and exercise of that policy was a proper exercise of its authority under the language of 12-C-1 which says that "...the final right to allot vacation

periods and to change such allotments is exclusively reserved to the Company in order to insure the orderly operation of the plants."

The Union begins by noting the language of 12-C-1 to the effect that "Vacations will, so far as practicable, be granted at times most desired by employees (longer service employees being given preference as to choice)...." It notes also that Management has final right to allot vacation periods in order to insure orderly operation of the plants, but says that the Company can prevail under that "final right" only by showing in the evidence that acceding to grievant's vacation preference would have interfered with orderly operations. The Union insists that in cases such as this it is necessary for the parties to get down to consideration of where grievant stands in the process of maintaining orderly operations in order to determine whether his absence at this or that particular time would interfere with that desirable goal.

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The Union stresses that grievant was a Pump House Tender in Seniority Unit 36 (Boiler House, River Pumps, Filtration Plant & Gas Generation), which is one of sixteen seniority units in the maintenance group and which included about 37 employees. The Pump House Tender job is filled by one man per turn, and at grievance time there were three other incumbents of that job and one other employee who filled in vacancies on it, in addition to several others whom the Union insists were capable of performing it. Only two employees in Seniority Unit 36 were entitled to 1964 extended vacations, one of whom deferred, after solicitation, to 1965. The extended vacation of the other employee was scheduled and taken from March 1 through May 24 of that year.

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FINDINGS

Since grievant actually had one week of vacation during hunting season and was offered the chance to take two weeks then, the problem cannot be stated realistically as if Management had deprived him of the claimed right to have two of his four weeks of vacation in the Fall hunting season; he was offered that opportunity. The problem does remain, however, of whether Management should have acceded to grievant's request that he have two weeks at that time as well as the two weeks which he received in June or whether the Company was justified, in order to insure orderly operations, in confining grievant's "wild" week to one of the first four months of the year. 15

The provisions of 12-C-2 broadened the period in which "wild" weeks of vacation could be scheduled to include the entire year, as opposed to the five-month period of 12-C-1 to which the balance of regular vacations are confined. But, that is all that was accomplished by that provision, as its second sentence makes clear. That is, the "wild" week now may be scheduled throughout the entire twelve-month period, but its scheduling continues to be subject to the three basic considerations applicable to all other vacation scheduling, i.e., that (1) so far as practicable, vacations will be granted at times most desired by employees; (2) longer service employees will be given preference in choice of vacation periods; and (3) the final right to allot vacation periods (and to change such allotments) is reserved exclusively to the Company, in order to insure orderly operation of the plants. 16

Thus, correlative rights and duties in requesting and granting "wild" week vacation periods are not different in kind from those facing the parties in scheduling extended vacation periods. Indeed, scheduling of "wild" weeks is less burdensome than is the scheduling problem presented by extended vacations, since in the former case it is necessary to allocate only one 17

week rather than thirteen. It is therefore appropriate, as both presentations here stress, to look to the Board's recent and major interpretive decision regarding scheduling of extended vacations in USC-1917.

Management reads that decision as requiring only that it develop and apply uniformly a nondiscriminatory vacation-scheduling policy, according fair consideration to employee preferences and relating final vacation-scheduling determinations to the goal of orderly operation of the plants, in short, that it not act arbitrarily, but that it need not relate those considerations to the conditions of an individual employee so as to show that it could not grant his particular vacation preference. 18

In support of those conclusions, the Company quotes various parts of the USC-1917 Opinion, relying particularly on two separate sentences, reading as follows: 19

"In considering these four individual claims, it should be said first that Section 12-D-1 does not require the Company to prove that every individual employee personally was indispensable to orderly operations and so could not be spared at the time he wished his EV."

"There should be no doubt, also, that Management is entitled to calculate its total vacation liability for the year and then to determine how the total can be worked into the available vacation periods so as to insure orderly operations."

By stressing those two sentences from USC-1917, however, the Company appears to misconceive the main thrust of that Opinion, as is demonstrated by a reading of other portions of it which place those two sentences in proper context, as follows: 20

"To avoid misunderstanding of the scope of this ruling, however, it should be clear that Management is not entitled to proceed on the basis that no extended vacations will be scheduled during the regular vacation period. Each individual employee request as to vacation scheduling must be treated on the basis of the facts which are relevant to it. What is unreasonable in one vacation scheduling situation (involving one type of operation or employee) may be entirely reasonable in another. The feasibility of scheduling EV's as requested in the regular vacation period in any individual case ultimately may turn (among other things) on such matters as (1) the relative volume of both types of vacations required in the given unit; (2) preferences actually expressed by all employees, and particularly the number of regular vacationers willing to accept vacation periods outside the May 1 to October 1 span; (3) the basic skills and experience required in the specific operation; (4) the individual's own skill and experience level in relation to the given operation; (5) expectable seasonal trends affecting operating levels; (6) anticipated occurrences affecting operating level in the given unit; and (7) other circumstances likely to affect required employment levels." (Emphasis added.)

Moreover, the two sentences between those quoted by the Company appear clearly to lean against Management's present approach. They read as follows:

"But it also should be clear that upon request by an individual employee, it must be demonstrated that his vacation preference could not be granted, as a practical matter, in accordance with the criteria of Section 12-D-1. What will constitute an adequate justification for this purpose necessarily will depend on the circumstances of the given case; all cases obviously cannot be given the same treatment." (Emphasis added.)

Furthermore, recitation in Paragraph 34 of that Opinion of the facts anticipated in the Tractor Shop at Gary Sheet and Tin reflects the less generalized kind of considerations necessary to a reasonable determination of vacation scheduling in relation to the insuring of orderly operations. Similar considerations appear in Paragraphs 12, 13, and 14 of that Opinion. Nothing in USC-1917 indicates that vacation-scheduling decisions there were made on a basis which viewed the unique problems of individual units and operations as if they all were the same. Moreover, in USS-4865-S, argued on the same day as the present case and from the same plant, the decision disputed there was not made from on high but was justified by the particular needs of the Tin Temper operation by explaining the details of the requirement that that unit constantly have at hand an adequate force of Roller and Assistant Roller skills.

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It thus appears that the vacation-scheduling decision here, which automatically closed off eight months which are available under the Agreement for scheduling of "wild" week vacations, was too general and was without reasonable regard for the particular needs of the specific operation and the preferences of individual employees. For example, at the plant

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level and as woodenly administered at the department and unit level, it was decided that all Irvin "wild" weeks would have to be taken in the first four months of the year. Thus, in January all employees entitled to a "wild" week were required to select one, with the period available for selection confined to January, February, March, and April. When grievant refused to make any such selection, he was allotted a week beginning in that period.

In effect, Management concedes several important phases of this case. It stipulated that grievant readily could be spared in the late Fall of 1964 and offered him the opportunity of taking two weeks' vacation then. In fact, he took two weeks in June, indicating that his absence then was not anticipated as interfering with orderly operations. Thus, although Management admits that grievant readily could have been spared during the two vacation periods which he preferred, it is noteworthy that its approach here necessarily views that admission as irrelevant. That is, it had developed a uniform policy of confining "wild" weeks to the first four months of the year and, although granting grievant's preference was not anticipated as interfering with orderly operation of his unit, it might have disrupted the policy. Thus, it was refused. What grievant asked for was two weeks in the Summer and two weeks (one would have been his "wild" week) in the late Fall. By forcing him to take the "wild" week in April and thus refusing his vacation preference without properly relating that refusal to the standards of 12-C-1, Management violated the Agreement.

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The question of remedy for the violation thus arises, and the only available approach seems to be to grant grievant one week's vacation pay.

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AWARD

The grievance is sustained, and Management shall pay grievant one week's vacation pay at the rate provided in Section 12-E as if he had gone on vacation the week beginning December 6, 1964, according to his preference.

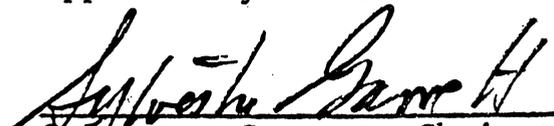
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Findings and Award recommended pursuant to Section 7-J of the Agreement, by



Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman