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BOARD OF ARBITRATION

Case USS-4956-S

June 15, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Sheet and Tin Operations
Fairless Works

and

Grievance Nos.
S-64-4 thru - 11

UNITED STEELWORKERS OF AMERICA
Local Union No. 5092

Subject: Slowdown as Basis for Exception to Payment
of Biweekly Salary Rates.

Statement of the Grievances: (All identically stated):
"I, the undersigned, claim that
Management has deprived me of my contractual rights
by sending me home and not paying me for the hours
so lost."
These grievances were filed in
the First Step of the grievance procedure in January,
1964.

Contract Provisions Involved: Section 9-B-2-c of the April 6,
1962 Salaried Agreement as amended June 29, 1963.

Statement of the Award: The grievances are denied.

BACKGROUND

Case USS-4956-S

This case from Fairless Works, Sheet and Tin Operations, raises a question under Section 9-B-2-c of the April 6, 1962 Salaried Agreement, as amended June 29, 1963.

After a prolonged period of low production by Scarfers, the number of slabs available for rolling was so reduced that Management shut down the 80" Hot Strip Mill at 11:30 a.m. on January 21, 1964 and cancelled the mill operating turn scheduled for 12:00 midnight to 8:00 a.m. on January 22. As a result, 5 salaried clerical employees directly associated with the 80" Hot Strip Mill operations were sent home early during the day turn on the 21st (a few hours after rolling ceased), and 3 others were notified not to report on the 12-8 turn on the 22nd. The 8 salaried employees were not paid for the time lost, in view of Section 9-B-2-c-(1) (Paragraphs 101 and 102) of the Agreement, providing:

"Nothing in this Agreement shall require payment for time not worked during a biweekly pay period due to causes such as:

"(1) Strikes or work stoppages in connection with labor disputes in or about the plants and/or offices."

The 8 grievances here protest the resulting reductions in applicable biweekly salary rates. The grievants, their occupations, and time lost are as follows:

<u>Grievance</u>	<u>Grievant</u>	<u>Occupation</u>	<u>Time Lost</u>	
S-64-4	J. M. Radvansky	Slab Inventory Clerk	2.5 hours	*
S-64-5	W. P. Schrode	80" Mill Clerk	4.5	*
S-64-6	R. Mirken	Billing Clerk	2.0	**
S-64-7	J. J. Heuer	Slab Inventory Clerk	8.0	***
S-64-8	N. R. Neuman	80" Mill Clerk	8.0	***
S-64-9	D. Laity	Duplicator Operator	8.0	***
S-64-10	A. Greco	Duplicator Operator	2.5	*
S-64-11	A. M. Sahn	Billing Clerk	2.0	**

* Sent home at 1:30 p.m. on 1-21-64

** Sent home at 2:00 p.m. on 1-21-64

*** 12-8 turn on 1-22-64 cancelled

In support of the grievances, the Union generally claims violation of Sections 1, 2-B, 4, 9, 10, 11 and 13 of the Salaried Agreement. In response to Management's reliance on Section 9-B-2-c, the Union contends (1) that there is no real proof of a slowdown by the Scarfers, (2) that even if there had been a slowdown, this could not constitute a "strike" or "work stoppage" within the meaning of 9-B-2-c-(1), (3) that grievants were relieved from duty even though work was available for them, and (4) that the true reason grievants lost hours was because Management suspended the Scarfers and failed to replace them with other employees. The Union also stresses that work always was found for the clerical group when the 80" Mill went down in the past. 4

As revealed in Cases USC-1708, -1759, USS-4971-S, a series of disputes arose under Scarfer Incentive Application No. 4130-51 during the years 1962 through 1964. While several Scarfer grievances were pending in the grievance procedure, the Company replaced Revision No. 5 to Application 4130-51 with Revision No. 6, effective December 16, 1963. 5

From December 16, 1963 through the 12:00 midnight to 8:00 a.m. turn on January 2, 1964, the Scarfers performed under the new incentive at a level yielding an average I.M.P. of 149%. In the week ending January 4, however, it became apparent that an anticipated increase in operating level would require a greater number of conditioned slabs for rolling on the 80" Mill, and 3 Scarfers (rather than 2, as scheduled) were used on a number of turns. Then on the 8:00 a.m. to 4:00 p.m. turn on January 2, Management posted a schedule for the next ensuing week showing 4 Scarfers per turn. This increase in Scarfers per turn would tend somewhat to reduce Scarfer earnings opportunity, for reasons noted in Case USC-1708, and generated a markedly unfavorable Scarfer reaction. From January 2 through January 21, Scarfer performance averaged only about 110% I.M.P. After the imposition of discipline, beginning on January 20, and a meeting of local Management with Steelworker Staff Representative Zitarelli (who in turn met with the Scarfers), performance began to improve. Since January, 1964, the Scarfer performance has averaged around 149% I.M.P.

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Relevant turn-by-turn performances by the Scarfers appear as follows:

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<u>Date</u>	<u>Index of Measured Performance</u>		
	<u>12-8 Turn</u>	<u>8-4 Turn</u>	<u>4-12 Turn</u>
12-16-63*	--%	133%	118%
12-17-63	156	170	169
12-18-63	122	161	109
12-19-63	140	151	139
12-20-63	153	141	125
12-21-63	148	176	146
12-22-63	93	149	182
12-23-63	136	158	181
12-24-63**	116	155	--
12-25-63**	--	--	--
12-26-63	150	156	166

Date	Index of Measured Performance		
	<u>12-8 Turn</u>	<u>8-4 Turn</u>	<u>4-12 Turn</u>
12-27-63	126	162	164
12-28-63	175	157	146
12-29-63	161	95	171
12-30-63	149	124	121
12-31-63	164	165	174
1- 1-64	176	171	152
1- 2-64	165	111	125
1- 3-64	130	100	132
1- 4-64	164	97	119
1- 5-64	123	99	93
1- 6-64	130	109	111
1- 7-64	87	101	94
1- 8-64	92	94	85
1- 9-64	90	122	95
1-10-64	99	127	134
1-11-64	102	134	110
1-12-64	73	128	101
1-13-64	95	137	103
1-14-64	116	106	98
1-15-64	105	104	144
1-16-64	111	101	128
1-17-64	101	110	128
1-18-64	97	100	134
1-19-64	113	105	126
1-20-64	97	100	97
1-21-64	107	101	121
1-22-64	146	106	132
1-23-64	156	131	159
1-24-64	164	136	139
1-25-64	164	137	139
1-26-64	137	135	106
1-27-64	124	133	129
1-28-64**	137	--	136
1-29-64	146	145	143
1-30-64	146	164	153
1-31-64	148	141	137
2- 1-64	113	120	146

* Revision No. 6
not effective
until 8-4 turn
of 12-16-63

** No scarfing
operations on
these dates where
blank entries
are shown.

Upon becoming convinced that many of the Scarfers were engaged in a deliberate, prolonged slowdown, Management disciplined 14 Scarfers over a period of some days. The bulk of them were suspended for two or more days, two were issued warning slips and suspended for the balance of a turn, and three received warning slips.

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By the day turn of January 21, after the apparent slowdown had been in progress for some two weeks, slab inventories were so depleted, and the flow of slabs so disrupted, that Management found it no longer possible to try to meet the operating schedule on the 80" Hot Strip Mill. Accordingly, the mill was shut down at 11:30 a.m. on that date and the next operating turn (scheduled for 12-8 on the 22nd) was cancelled.

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Grievants were scheduled on January 21 and 22, 1964 to work on the jobs of Slab Inventory Clerk, 80" Mill Clerk, Duplicator Operator, and Billing Clerk. Each of the first three jobs is manned by a single incumbent per mill operating turn whose duties are directly associated with the 80" Mill operations. On the 8-4 turn on January 21, Grievants Radvansky, Schrode, and Greco manned these jobs. On the 12-8 turn on January 22, the jobs were scheduled to be manned by Grievants Laity, Heuer, and Neuman.

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These three jobs handle paper work essential to rolling, mainly the "mill hot sheet." Two of the grievants, Mirken and Sahm, were scheduled on the Billing Clerk job on the 8-4 turn of January 21. On that turn, the 80" Mill was rolling coils for shipment to Gary Sheet and Tin directly from the mill, and these two Billing Clerks were assigned to handle the paper work necessary in such operation. The evidence leaves no doubt that the work for which the 8 grievants were scheduled was directly related to operation of the 80" Hot Strip Mill. Although the mill was shut down at 11:30 a.m. on the 21st, the grievants who were

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scheduled out on that turn were not sent home until their assigned work was completed. Thus, Radvansky, Schrode, and Greco were sent home at 1:30 p.m., while Mirken and Sahn were sent home at 2:00 p.m. Since the entire operating turn for the 12-8 shift on the 22nd was cancelled, Grievants Laity, Heuer, and Neuman were told not to report.

The Company does not deny that Management has normally attempted to make work for the clerks on past occasions when the 80" Mill did not operate. The Company says, however, that in these earlier instances the circumstances were such that the Company was obligated to pay the clerks their full biweekly salary rates even though the mill was down, so that it attempted to keep clerks at work and realize some return for their salaries. In the present situation, the Company did not believe that it was obligated to pay the grievants for the time not worked by them on January 21 and 22 and so did not choose to keep them at work on tasks which would have been a make-work arrangement.

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The Company holds that a "slowdown" comes under the specific exception listed in Marginal Paragraph 102, in the language: "Strikes or work stoppages in connection with labor disputes in or about the plants and/or offices." Even though this language does not use the express term "slowdown," the Company submits that the slowdown, in which it holds the Scarfers were engaged, was tantamount to a "work stoppage."

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The Company also stresses the introductory provision of Section 9-B-2-c, reading: "Nothing in this Agreement shall require payment for time not worked during a biweekly pay period due to causes such as ..." (underscoring added.) Thus, says the Company, the 9-B-2-c salary exception is not limited precisely to just the five enumerated causes listed. Thus, even if Paragraph 102 were held not to cover a slowdown, it is clear to the Company that a slowdown constitutes a cause "such as" a strike or work stoppage and thus provides proper basis for application of the exception.

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FINDINGS

Section 9-B-2-c of the Salaried Agreement must be applied in accordance with the intent reasonably reflected in the language used by the parties when they set forth exceptions to payment of applicable biweekly salary rates.

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It is true that the specific word "slowdown" is not used in Section 9-B-2-c-(1), but this is not the end of the matter. The term "work stoppages" is broad enough to cover a slowdown occurring in the plant, if such a slowdown in fact constitutes the responsible cause for time lost from work by salaried employees. This conclusion is inescapable when it is noted that Section 9-B-2-c-(1) is introduced by the phrase "due to causes such as" (underscoring added): a slowdown in some circumstances clearly can be a cause "such as" a strike or a work stoppage.

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Accordingly, the Board holds that where a proven slowdown in a plant actually represents the responsible cause for loss of time from work by salaried employees, the situation (to that extent) may fall within the exception to full payment of applicable biweekly salary rates.

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In this case, two principal questions thus remain: (1) whether the evidence establishes that a Scarfer slowdown actually took place, and if so (2) whether such slowdown was the responsible cause for grievants' lost time.

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The Union strongly denies that there was any slowdown, and suggests that the Company here seeks to prejudice rights of Scarfers who are not in the salaried unit and who did not participate in the hearing. The Company asserts, however, that none of the evidence here bears on the merit, or lack thereof, of any disciplines imposed on Scarfers for participating in the alleged slowdown.

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Solely on the evidence now in hand, and without in any way affecting ultimate disposition of any pending Scarfer grievances based on the disputed disciplinary actions, the Board finds ample support for the view that a slowdown commenced (on the part of a substantial number of the Scarfers, but not all) on January 2, 1964. A marked slowdown appears to have developed and spread on January 7. It persisted thereafter, with the exception of some turns, at least through the second turn on January 21. As already noted, disciplinary suspensions were issued commencing January 20: four Scarfers were sent home at 11 a.m., and 4 others were sent home at 8 p.m. that day. The next day 7 Scarfers were sent home early and suspended for 2 additional days. Other disciplinary action was imposed on succeeding days until Scarfer production had returned to more normal levels--in good part, it would appear, as a result of meetings with Steelworker Staff Representative Zitarelli.

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While the Union suggests that the Scarfer slowdown was not the responsible cause of grievants' lost time, the Board cannot embrace this view. Grievants' work on the turns in question was dependent upon the 80" Mill operations. It is true that some of the lack of conditioned slabs may have resulted from the Scarfer suspensions, but the imposition of discipline in a slowdown situation cannot be viewed as a separate supervening cause, without finding that Management's effort to break up the slowdown in this way was unreasonable and unjustified. There is nothing in this record to support such a conclusion. Nor does it appear reasonable or practical, under the evidence, to rule that Management should have tried to replace the disaffected Scarfers with untrained employees in an effort to keep operations moving.

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Finally, there seems to be no real doubt that the shutting down of the 80" Hot Strip Mill was a proper response to the lack of necessary steel to maintain a reasonable rolling schedule. When strikes, work stoppages, or slowdowns

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occur, the Company is not obliged to keep operating--however inefficiently--until all available material has been processed. In any such situation a point is reached where reasonable judgment must be exercised as to whether operations can be continued any longer without gross inefficiency. The evidence here confirms the view that such a point was reached in this case.

Finally, the fact that Management in earlier situations found work for grievants, when the 80" Mill was down, cannot control. No such earlier situation involving a shutdown of the 80" Mill is shown to have come within the scope of Section 9-B-2-c.

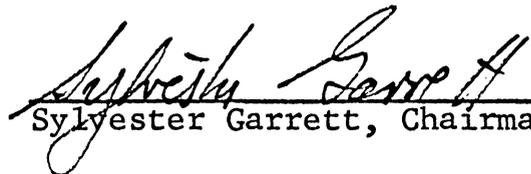
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AWARD

The grievances are denied.

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BOARD OF ARBITRATION


Sylvester Garrett, Chairman