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BOARD OF ARBITRATION

Case USS-4957-S

June 15, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Sheet and Tin Operations
Fairless Works

and

Grievance No. S-64-27

UNITED STEELWORKERS OF AMERICA
Local Union No. 5092

Subject: Scope of Exceptions to Payment of Biweekly Salary Rates; Stranger Picketing.

Statement of the Grievance: "We, the attached and signed, hereby claim that the company in withholding pay for the demonstration at Fairless Works on April 21, 22, 1964, has violated the agreement between United States Steel Corporation and the United Steelworkers of America Salaried Employees dated April 6, 1962.

"The Company has no right under the agreement to delete from our pay any monies that we would have earned had we been allowed to report to our work stations.

"The reason we were not there, is just and valid."

This grievance was filed in the grievance procedure May 12, 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 grievance is sustained, in part, to the extent indicated in the above Opinion. The parties locally shall determine which employees involved are entitled to be made whole for improper deductions for time lost from work under the principles set forth above.

BACKGROUND Case USS-4957-S

This case from Fairless Works claims that numerous employees in the Salaried Bargaining Unit improperly were deprived of their full biweekly salary under Section 9-B-2 of the April 6, 1962 Salaried Agreement when they were delayed or prevented from getting to work on either April 21 or 22, 1964, or both, by pickets from the International Longshoremen's Association (ILA) and the International Organization of Masters, Mates and Pilots (MMP). 1

The ILA-MMP picketing on April 21 and 22, 1964 was intended to force the Company to accede to the desires of the ILA and MMP as to who would perform certain work in loading and operating a U. S. Steel ship, S. S. Columbia. The Columbia is used to transport semi-finished steel from Fairless to Pittsburg Works in California, and employees in the P. and M. bargaining unit represented by the Steelworkers were assigned to load the vessel at Fairless. 2

The S. S. Columbia first touched at Fairless for loading on January 28, 1964 and departed for California February 3, without any picketing. The Columbia next touched at Fairless at 8 a.m. on March 13, and the MMP picketed at both main gates of the plant (Nos. 6 and 8) and also with a picket boat on the Delaware River. Picketing continued until the Columbia departed at 4:10 p.m. March 16. All such picketing was peaceful. 3

The Columbia next docked at Fairless about 10:35 p.m. on April 20, to be loaded for sailing at 2:30 p.m. April 23. Arrival of the vessel was greeted by both ILA and MMP pickets at the main gates and a picket boat on the River. Picketing was peaceful and reasonably orderly on April 21, with pickets beside the roadways, not blocking access to the plant. On the morning of April 22, however, mass picketing was applied to bar employees from the plant; the plant gates were effectively blocked for substantial periods of time until a Bucks County Court injunction was served on the pickets about 3:45 p.m. and physical obstruction of the gates was discontinued. 4

The parties did not present detailed evidence as to each individual involved in the grievance, but the following summary from the 4th Step Minutes seems reasonably non-controversial:

"<u>April 21, 1964 - 1st Turn</u>

"Pickets at Gates 6 and 8. Cars were slowed but not stopped. Some cars turned around apparently of driver's own volition. Slightly more than 80% of plant bargaining unit employees reported (P&M and Salaried). Although not a great number of salaried employees work on other than day turn the salaried attendance was approximately the same percentage-wise.

"<u>April 21, 1964 - 2nd Turn</u>

"Pickets at Gates 6 and 8. Cars slowed but not stopped. Some cars turned around apparently of driver's own volition. Approximately 90% of all employees reported for work including 97% of the salaried employees.

"<u>April 21, 1964 - 3rd Turn</u>

"Pickets at Gates 6 and 8. Cars slowed but not stopped. Some cars turned around apparently of driver's own volition. Approximately 97% of all employees reported for work.

"<u>April 22, 1964 - 1st Turn</u>

"Pickets at Gates 6 and 8. Some cars through Gates 6 and 8. Gate 7 opened for relatively short period with at least 200 cars entering. Slightly more than 75% of all employees reported for work.

"April 22, 1964 - 2nd Turn

"Pickets at Gates 6 and 8. Few if any cars through Gate 6. Some cars through Gates 8 and 4. Approximately 30% of all employees reported for work.

"April 22, 1964 - 3rd Turn

"Gates cleared at 3:55 p.m. as result of Court Order served by sheriff."

When MMP picketing first commenced on March 13, 1964, the P. and M. and C. and T. employees in the respective bargaining units at Fairless were advised by the Steelworkers to report for work as usual. Union representatives thereafter continued so to advise the employees. Apparently no employee was prevented from entering the plant, or significantly delayed by the pickets, until April 21. Three Union witnesses testified concerning the picketing and congested traffic which delayed them on April 21 so that they were 15 to 30 minutes late reporting. Four witnesses were unable to report on April 22, because the pickets obstructed the various gates, for periods ranging from 2-1/2 up to 7-3/4 hours; one did not report at all. Several of these witnesses were told by police officers not to try to drive into the plant because of the possibility of violence; several also talked to their supervisors, either in person, or by phone, and were instructed to stay in the vicinity of the plant gates and try to get in whenever it became possible. After the Bucks County Court injunction was served, peaceful picketing continued, but it once more was possible to enter the plant. On June 18, 1964 a Federal District Court temporary injunction was issued under Section 10 (1) of the Labor Management Relations Act, barring any further picketing and like activity. Meanwhile, a proceeding

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had been initiated before the National Labor Relations Board by the Company, and on February 15, 1965 the NLRB issued its final decision, holding that employees represented by the Steelworkers were entitled to perform the disputed work of loading semi-finished steel into the S. S. Columbia and stating:

> "2. Accordingly, Local 1291, International Longshoremen's Association, AFL-CIO, is not and has not been lawfully entitled to force or require the United States Steel Corporation to assign the loading of the Employer's cargo into the Employer's S. S. Columbia at the Employer's dock to members of said organization.
>
> "3. Within 10 days from the date of this Decision and Determination of Dispute, Local 1291, International Longshoremen's Association, AFL-CIO, shall notify the Regional Director for the Fourth Region, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b) (4) (D) of the Act, to assign the work in dispute to its members, rather than to employees represented by Local 4889, United Steelworkers of America, AFL-CIO."

Broadly speaking, the biweekly salaries of those employees who either were late or who did not work on April 21 or 22, 1964 were reduced in proportion to the amount of time thus lost. Management made such deductions in accordance with its interpretation of Section 9-B-2-c of the Salaried Agreement reading as follows: 7

"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.

"(2) Refusal of the employee to perform the work to which assigned.

"(3) Absence from work without just cause.

"(4) Voluntary absence from work.

"(5) Justifiable discharge or suspension from work."

The various employee complaints reflected in the present grievance generally fall into two broad categories: 8

(1) Employees who worked less than 80 hours in the pay period because of absence or tardiness on April 21 and 22, resulting from the picketing, and who claim that their biweekly pay should not have been reduced for such time not worked. 9

(2) Employees absent because of the picketing on either April 21 or 22, but who worked an otherwise unscheduled day on Saturday, April 25, and who therefore claim that they are entitled to their full biweekly salary rates, plus an extra day's pay, citing the Shaver-Pastin letter of June 7, 1957.* 10

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* The Shaver-Pastin letter of June 7, 1957 is attached hereto as Appendix A.

The Union stresses that Section 9-B-2 specifies that an employee's "biweekly salaried rate" is the "established biweekly salary rate of pay for an employee scheduled for 80 hours of work." In the Union view, the events of April 21 and 22, 1964 provide no basis for the Company to rely on any of the exceptions set forth in Section 9-B-2-c. It urges that all of the grievants were prevented from entering the plant by the pickets, and that the illegal ILA-MMP picketing activity was not "a strike or work stoppage" within the meaning of Section 9-B-2-c-(1). Since the ILA and MMP do not represent any of the employees at Fairless Works, the Union is confident that no one could believe that there was any strike or work stoppage at Fairless on April 21 or 22. All that occurred was picketing in an improper effort to assert jurisdiction over work which (as later held by the NLRB) was within the Steelworkers' bargaining unit. 11

The Company recognizes the ILA-MMP picketing in itself was not a strike or work stoppage, within the meaning of these terms as they appear in Section 9-B-2-c, but it stresses that the picketing was part of a "labor dispute" which should be regarded as essentially similar to a strike or a work stoppage for purposes of Section 9-B-2-c. The Company holds that the problem here is not one of equity, but rather one of interpreting the contract as written. Since Section 9-B-2-c refers to "causes such as" the five subsequently enumerated reasons (for which payment may be deducted from the biweekly salary) the Company believes that a jurisdictional dispute of this sort, by reasonable implication, falls within the intent of Section 9-B-2-c-(1) so as to relieve the Company from the biweekly salary guarantee as to hours lost because of such picketing activity. 12

The Company also argues that the picketing activities of the ILA and MMP were just as restrictive of the Fairless Works operations on April 22 as if a strike had been conducted by the Steelworkers. It cites Case CI-245, where the Board ruled that 13

a curtailment of Gary Steel Works operation as a result of a railroad strike was within the scope of Section 9-B-2-c-(1), and stated:

> "Turning to the precise language of the disputed Section, the Board finds no limitation as to what kinds of strikes or work stoppages shall relieve the Company from its obligation to pay the established salary rate where work is curtailed. Nor does anything in Section 9-B-2 reasonably imply such a limitation. Thus, there is no basis on which the Board could limit the effect of this language to strikes or work stoppages in which the United Steelworkers of America participated."

In respect to the June 7, 1957 Shaver-Pastin letter, the Company holds that the time lost by employees as a result of the ILA-MMP picketing also must be treated as an "absence for which salary is not payable" within the meaning of numbered paragraph 2 of that letter as made plain in the illustrative tables there provided. 14

FINDINGS

The parties' presentations seem to rest on a belief that disposition of all of the approximately 400 individual claims in this grievance might turn automatically upon whether the ILA-MMP picketing activity is found by the Board to fall within the term "strikes or work stoppages in connection with labor disputes in or about the plants and/or offices." It does not appear, however, that sound disposition of all problems in the present case is so easily possible under the controlling provisions of the Salaried Agreement. 15

The Company correctly stresses that the case cannot be determined on the basis of "equity," but must be governed only by the language of Section 9-B-2-c. The Company also rightly urges that Section 9-B-2-c must be given a reasonable construction. Finally, the Company properly notes that its position here represents a step beyond its successful argument in Case USS-4956-S (also decided today) that a "slowdown" might fall within the scope of Section 9-B-2-c-(1). 16

The ILA-MMP picketing at Fairless Works on April 21 and 22, 1964 did not involve a strike or work stoppage within the meaning of those terms as used in Section 9-B-2-c-(1). Thus the hard question is whether such picketing activity represents a cause "such as" one of the specified exceptions listed under Section 9-B-2-c authorizing deductions from biweekly salaries. 17

The decision in Case CI-245, cited by the Company, was based upon the language of the May 31, 1947 Salaried Agreement, which then provided: 18

> "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."

Shortly after Case CI-245 was decided, the parties (in their 1952 negotiations) added to the above quoted language in 9-C-2-b-(1) the words "in or about the plants and/or offices" to limit somewhat the scope of this exception to payment of the applicable biweekly salary rate. With this change the language of Section 9-B-2-c-(1) has remained the same in succeeding Agreements.

19

The 1952 change, in itself, did not produce any controlling difference between the language of the 1947 and 1952 Salaried Agreements for purposes of the present problem. But the fact that such a change was negotiated against the background of the decision in Case CI-245 serves to underscore the care with which the parties first drafted, and later revised, the language of this exception to payment of biweekly salary rates. It is no accident that the parties used the broader term "labor dispute" in 9-B-2-c-(1) in such a way as to reveal that only "strikes" and "work stoppages," and not "labor disputes" in general, are within the intent of this exception to payment of the biweekly salary rate. The Board, therefore, cannot embrace the view that the introductory words "such as" in Section 9-B-2-c indicate that "informational picketing" or "stranger picketing" by outside organizations, not representing any employees in the plant, fall within the scope of this exception to payment of the full biweekly salary rate. Such picketing may reflect a "labor dispute," but the exception of Section 9-B-2-c-(1) is limited to <u>strikes</u> and <u>work stoppages</u> "in connection with labor disputes."

In the present case, many salaried employees were told by their supervisors to come to work despite the picketing, and if necessary to wait outside the plant to see if the picket line would be removed. Those who thus stayed and entered the plant on April 22, even though they were delayed, were serving the Company's interest as much as their own. On the other hand, a significant number of grievants apparently were absent from work on April 21, 1964, even though the great bulk of employees were able to enter the plant. It seems reasonable to infer that any employee who did not report for work on April 21 (as well as on the first and third turns on April 22), and who was not sick or absent for some other valid reason, decided voluntarily not to report to work after observing the pickets. As to any such employee, the provisions of either Section 9-B-2-c-(3) or -(4) would seem to apply. 20

The situation on day turn of April 22 seems different, in that the plant gates were so effectively blocked for such a long period that it could have seemed reasonably clear to employees that their chance of getting into the plant was too small to warrant waiting around longer. 21

Since the details of the various situations of all 400-odd grievants were not developed in the evidence, it is necessary to set forth the following ground rules for the parties to use locally in disposing of the claims of the individual grievants: 22

1. The mere fact that the ILA-MMP picketing took place did not of itself excuse any salaried employee from reporting for work. In such a situation a salaried employee is obliged to make every reasonable effort to enter the plant in order to report for work as scheduled. 23

2. Any employee who in fact was prevented from reporting for work by the ILA-MMP activity, or who was delayed involuntarily for this reason, was entitled to receive the applicable biweekly salary rate, without deduction for time thus lost from work. Many employees appear to have been delayed in reporting on both days here in issue. 24

3. Whether an employee was prevented from reporting for work by the ILA-MMP picketing on either day (as distinct from mere delay) is a matter of fact to be determined on a case-by-case basis, but the following inferences seem reasonable: 25

(a) Any employee who was entirely absent on April 21, or on first or third turn of April 22, may be deemed to have been absent voluntarily (unless able to show illness or other proper cause for absence), since there is no showing that the plant gates were physically blocked to such an extent at these times as to preclude employees from reporting, and the great bulk of employees reported for work. Such an employee's absence from work falls within either Section 9-B-2-c-(3) or -(4). 26

(b) During the day turn on April 22, presumptively, the salaried employees were physically prevented from entering the plant by the ILA-MMP activity. The time which they lost as a result cannot be deducted from their biweekly salary rates. Such an inference might not arise, however, as to any salaried employee who also was absent from work on April 21, under circumstances indicating that such absence was voluntary. 27

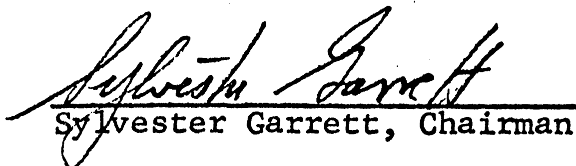
4. In addition to the foregoing, any salaried employee who was told by a Management representative not to report for work as scheduled, and who did not report for this reason, may be regarded as absent from work with just cause. 28

5. There are no details in this record to indicate any special problem under the 1957 Shaver-Pastin letter going beyond application of the above principles to each individual with respect to time lost from work on either April 21 or April 22. 29

AWARD

The grievance is sustained, in part, to the extent indicated in the above Opinion. The parties locally shall determine which employees involved are entitled to be made whole for improper deductions for time lost from work under the principles set forth above. 30

BOARD OF ARBITRATION



Sylvester Garrett, Chairman

APPENDIX A

USS-4957-S

UNITED STATES STEEL CORPORATION

525 William Penn Place

Pittsburgh 30, Pa.

C O P Y

Industrial Relations
Department

June 7, 1957

John J. Pastin, Chairman
Salary Negotiating Committee
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh 22, Pennsylvania

Dear Mr. Pastin:

Subject: Application of Section 9-B-2 and Section 11-C-1 of the 1956 Salary Agreement

In order to establish a uniform basis for the settlement of grievances on this subject now pending in the grievance procedure, it is understood that the following application of the above provisions shall be made by the necessary parties in the applicable grievance procedure step:

1. In calculating pay for daily overtime worked in payroll weeks when other scheduled days in the payroll week were not worked, there shall be no deduction of amounts due under the time-and-one-half provision for daily overtime hours due to such absence on other days. Examples:

	S	M	T	W	T	F	S	S	M	T	W	T	F	S	Total
Scheduled	-	8	8	8	8	8	-	-	8	8	8	8	8	-	80
Worked	-	8	8	8	8	8	-	-	11	8	8	8	S*	-	75
Hrs. Pd.	-	8	8	8	8	8	-	-	12½	8	8	8	8	-	84½
Scheduled	-	8	8	8	8	8	-	-	8	8	8	8	8	-	80
Worked	-	8	8	8	8	8	-	-	11	8	8	8	0**	-	75
Hrs. Pd.	-	8	8	8	8	8	-	-	12½	8	8	8	0	-	76½

*S - Sick or authorized absence with pay.
**0 - Absence for which salary is not payable.

2. In calculating biweekly salary earnings due in a given pay period, should an employee fail to work on any of his scheduled days in a payroll week, there shall be no deduction, because of said failure to work, from amounts due for time actually worked beyond the work schedule. Examples:

	S	M	T	W	T	F	S	S	M	T	W	T	F	S	Total
Scheduled	-	8	8	8	8	8	-	-	8	8	8	8	8	-	80
Worked	-	8	8	8	8	8	-	-	8	8	8	S*	8	8	80
Hrs. Pd.	-	8	8	8	8	8	-	-	8	8	8	8	8	8	88

	S	M	T	W	T	F	S	S	M	T	W	T	F	S	Total
Scheduled	-	8	8	8	8	8	-	-	8	8	8	8	8	-	80
Worked	-	8	8	8	8	8	-	-	8	8	8	0**	8	8	80
Hrs. Pd.	-	8	8	8	8	8	-	-	8	8	8	0	8	8	80
Scheduled	-	8	8	8	8	8	-	-	8	8	8	8	8	-	80
Worked	-	8	8	8	8	8	8	-	8	8	8	S*	8	8	88
Hrs. Pd.	-	8	8	8	8	8	12	-	8	8	8	8	8	8	100

*S - Sick or authorized absence with pay.
**0 - Absence for which salary is not payable.

Upon receipt from you of a confirmed copy of this letter, we will proceed with settlement of the grievances on that basis effective as of the date provided in Section 7-G of the August 3, 1956, Agreement.

Yours very truly,

/s/ J. Warren Shaver

J. Warren Shaver
Assistant Vice President

Confirmed:

/s/ John J. Pastin
John J. Pastin, Chairman
Salary Negotiating Committee