5-1-1964

United States Steel Corporation American Steel and Wire Division Cuyahoga Works and United Steelworkers of America Local Union 1298

Sylvester Garrett

BOARD OF ARBITRATION

Case A-1029

May 1, 1964

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
AMERICAN STEEL & WIRE DIVISION
Cuyahoga Works

and

Grievance No. CC-1790

UNITED STEELWORKERS OF AMERICA
Local No. 1298

Subject: Seniority - Physical Fitness

Statement of the Grievance: "I, Archie James, Jr., am charging Management with violation of Sec. 13 of our 1962 Agreement."

This grievance was filed in the First Step of the grievance procedure April 30, 1963.

Contract Provision Involved: Section 13 of the April 6, 1962 Agreement.

Statement of the Award: The grievance is denied, without prejudice to any continuing rights of grievant under Section 13 and the local pool agreement in the event some specific position becomes available in the future to which he might be assigned without undue risk to safety and health.

BACKGROUND Case A-1029

Employee James, formerly of the American Division of Cuyahoga Works, protests that the Company violated Section 13 when he was laid off as a Millwright on September 14, 1962, as a consequence of the permanent shutdown of the American Division. 1

The pertinent local seniority agreement would automatically have resulted in the assignment of James to a job in the Cuyahoga Works seniority pool (James having elected layoff rather than severance allowance) had he been physically fit for work. The Union asserts that the grievant is capable of light work and the Company, basing its conclusion on certain medical evidence, believes that James could not pass a pre-employment physical examination and states that, in any event, there are no light-work jobs available. 2

A chronological review of events will bring this case into sharp focus. The grievant's continuous service runs from 1948 and his employment experience at the American Division is comprised of Laborer, Tractor Operator, Truck Driver, and Millwright. On December 26, 1961, James suffered a back injury while working. Plant physician Strain diagnosed the injury as "acute lumbosacral back strain." James was hospitalized for four days and performed light work until March 18, 1962. In January, 1962, Dr. Strain referred the grievant to Dr. Bell and, subsequently, to Dr. Murphy, who made certain recommendations for treatment. On March 19, 1962, James returned to his regular Millwright job and continued thereon until September 14, 1962, receiving treatment and examination from Dr. Strain during that period and until November 5, 1962. On November 23, 1962, James requested permission of the Ohio Bureau of Workmen's Compensation to select a doctor other than Dr. Strain. At a Bureau meeting on February 11, 1963, the Bureau received from James a report from his own physician, Dr. Rosenberg. On July 22, 1963, the Bureau granted the request for a change of physicians, this affirmative action on the petition of grievant apparently being based on reports of Drs. Duncan and Parsons who had examined the grievant at the Bureau's behest. 3

Dr. Strain's testimony and letters signed by Dr. Bell and Dr. Murphy reveal marked discrepancy between concrete, objective medical findings and the grievant's subjective complaints. Therefore the diagnosis was inconclusive for many 4

months, although all agreed that some disability existed, estimates of partial disability ranging from 25 to 35 per cent.

The Union argued that the Company at Cuyahoga Works 5
does assign injured employees to light work and the Union, conceding that James cannot perform his regular Millwright functions, feels that a Custodian or Chipper job might be appropriate. Moreover, the grievant would in fact be working if the American Division still functioned. The grievant himself believes that he could operate a tractor or crane.

The Company denies that James would be working had 6
not the American Division been shut down--at least he would not be doing Millwright work. Management states that light work jobs at Cuyahoga are "open jobs" and employees do not utilize seniority to bump on to them. Elaborating on the practice followed, the Company stated that many American Division employees were transferred to Cuyahoga and assigned to jobs on the basis of all three seniority factors. Any American Division employee who had been on layoff status for any length of time was given a physical examination and some six or eight were rejected for medical reasons. James' medical history prompted Management to search for a suitable light job. A Sweeper job was considered but was ultimately rejected in view of the requirement that incumbents on that job must move 100 pound barrels of cleaning compound. Superintendent of Personnel Services Orr testified that he knows of no job that the grievant can perform and, further, that the Union had not pointed out a suitable job. The Company denies alleged discrimination and asserts that the requirement that James pass a physical examination was standard practice and that no unfavorable conclusion can be drawn from Management's failure to locate light work.

FINDINGS

The archives of Board decisions are not helpful for 7
purposes of this case since prior cases involved conflicts of medical evidence. No such conflict exists here. All physicians agree that James is partially disabled, although

disability percentages vary. The grievant's own physician, Dr. Rosenberg, wrote as follows: -

> "I consider that his condition represents a permanent-partial disability of about 35 percent. If he is not appreciably improved with the appliance described or if he indeed becomes worse, investigation for the possibility of a disc herniation will be indicated. He could not at present pass a pre-employment physical examination."

The letter also stated:

> "I doubt that he could do heavy work on a regular basis. I believe that with the aid of a custom-made Bennett back brace he could probably do light work with relative impunity."

There appears to be no reason why the Company would 8
be barred from giving physical examinations, but it does not follow that the grievant could be required to qualify as a new employee since he is a member of the labor pool at Cuyahoga Works. The real question is whether there is a specific light job that James can do. At the present time there are a number of light jobs being performed but there is no showing that grievant is more entitled to fill them than the incumbents and there is no evidence of any other specific job he can fill at this time.

AWARD

The grievance is denied, without prejudice to any 9
continuing rights of grievant under Section 13 and the local pool agreement in the event some specific position becomes available in the future to which he might be assigned without undue risk to safety and health.

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

David C. Altrock
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman