9-25-1964

United States Steel Corporation Columbia-Geneva Steel Division Geneva Works and United Steelworkers of America Local Union 2701

Sylvester Garrett

BOARD OF ARBITRATION

Case G-159

September 25, 1964

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Columbia-Geneva Steel Division
Geneva Works

and

Grievance No.
CP-20-76-62

UNITED STEELWORKERS OF AMERICA
Local No. 2701

Subject: Seniority - Temporary Vacancies.

Statement of the Grievance: "The Union protests Management's refusal to pay monies provided for in the 9-J-3 Section of the Agreement to employees assigned to the position of Wharfman and Quencher Car Operator.

"The Union requests that these payments be made immediately to the employees affected."

This grievance was filed in the Second Step of the grievance procedure July 17, 1962.

Contract Provisions Involved: Sections 9-J-3, 13-A and 13-F of the April 6, 1962 Agreement.

Statement of the Award: The grievance is sustained.

BACKGROUND Case G-159

This grievance from the Coke and Coal Chemicals Department of Geneva Works claims improper failure to pay three Laborers in accordance with Section 9-J-3 when they were directed to fill temporary vacancies on Wharfman and Quencher Car Operator jobs, after having declined to fill such vacancies on a voluntary basis. 1

On the day in dispute three temporary vacancies arose in the Coke Oven line of progression, apparently because of unexpected temporary absence of a Quencher Car Operator (Class 7) and two men on the Wharfman (Class 3) job. Some months before, there had been a force reduction in the Coke Plant. Two of the three grievants at that time were reduced (from jobs in the Coke Oven line of progression) down to Laborer jobs in the Coke Plant Department Labor Pool. The third grievant was a Laborer in the Pool when the force reduction occurred, and continued as Laborer at all times here relevant. Because total earnings on the Quencher Car Operator and Wharfman jobs (including incentive) were less than on the laborer jobs, none of the grievants wished to be temporarily "upgraded." After they had expressed their disinterest, Management attempted to obtain volunteers from among other Laborers (with less continuous service) to fill the temporary vacancies. Failing to obtain volunteers, Management then assigned Baum to the Quencher Car Operator vacancy, and the other two grievants to the Wharfman vacancies. 2

The grievance asserts that under these circumstances, the three temporary assignments were made at Management's direction and to suit its convenience, so that grievants were entitled to the earnings protection prescribed in Section 9-J-3, reading as follows: 3

> "In the event an employee is assigned temporarily at the request or direction of Management from his regular job to another job, such employee, in accordance with the provisions of this Section, shall receive the established rate of pay for the job performed. In addition while performing work under such circumstances, such employee shall receive such special allowance as may be required to

equal the earnings that otherwise would have been realized by the employee. This provision shall not affect the rights of any employee or the Company under any other provision of this Agreement."

The Company holds that Section 9-J-3 is not applicable because the three grievants allegedly were upgraded in accordance with their seniority rights under Section 13-A of the Basic Agreement, as implemented by the Local Seniority Agreement. Under the Local Seniority Agreement, says the Company, the grievants not only were entitled to fill the temporary vacancies, but were required to do so. 4

There is no provision in the Local Seniority Agreement which requires employees to accept assignments to fill temporary vacancies on jobs on which they hold "incumbency" rights, nor does the Company rely on any claimed practice to this effect. In Case G-153 (decided March 30, 1964), the key issue was whether an employee could refuse to accept a recall to the job from which he had been demoted in a force reduction, without thereby breaking his continuous service rights to the job (and seniority unit) involved. The Board there found that by refusing recall, the grievant broke his continuous service rights as to the job and unit involved, under long established practice. 5

Grievant Johnson has an occupational date on the Wharfman job in Class 3 under the Local Seniority Agreement because he established an occupational service date on the Lidman job (Class 6) in the same line of progression. The Company holds that the decision in Case USC-1317 recognizes that the right to fill a vacancy in accordance with Section 13-F carries with it a correlative duty to accept such temporary assignment without reference to Section 9-J-3. 6

The Company would apply the same type of reasoning to Grievant Baum, although he did not have occupational service on the Quencher Car Operator job to which he apparently was assigned 7

on the occasion in question. Since he has a unit service date in the given promotional sequence, on the lowest job of Wharfman, the Company believes that Baum also was obliged to fill a vacancy as Quencher Operator because he had seniority rights in the line of progression.

Grievant Reay had no occupational service on any job in the promotional sequence. The Company nonetheless asserts that he had a seniority claim to the Wharfman vacancy because he was the oldest available Laborer at the time and thus was entitled to fill the vacancy. 8

The Union stresses that the right of an employee to decline to fill a temporary vacancy has long been recognized as a normal aspect of the Local Seniority Agreement at Geneva Works. Moreover, Section 13-F of the Basic Agreement specifically contemplates that an employee entitled to fill a temporary assignment is entitled to decline it. Since the employees here thus were entitled to decline to fill the vacancies, their assignment to them was for the convenience of Management. 9

The Union asserts that Section 9-J-3 long had been applied to cases such as the present at Geneva Works, until Case USC-1317 arose at Fairless Works. The Company does not agree with this assertion, but it appears that for about three years Section 9-J-3 had been applied under similar circumstances when Coke Plant Laborers were assigned to fill temporary vacancies in the Coal Handling promotional sequence. 10

FINDINGS

This case appears to have reached the Board because of some confusion as to the scope of the Board's earlier decision in Case USC-1317. Counsel for the Company seemed to argue, for example, that it had been established under USC-1317 that an employee's "regular job" for purposes of Section 9-J-3 was any job as to which an employee had established incumbency rights which would entitle him to a recall under Section 13-A-2. Thus Counsel stated: 11

". . .We believe that a man who has incumbency rights on a job when business is good and you have full production, that is his regular job and when you have the reduction in force, he is down on another job which is not necessarily his regular job at all and when the opportunity arises for him to return to that job, that becomes his regular job at any particular moment or at all times and we think the same would be true with respect to the man who has seniority rights to a job by virtue of his unit service and we have traditionally stayed with that contention that the normal pattern, the normal movement of a man in his seniority structure does not bring into play 9-J-3 and we believe that the cases that have been referred to specifically recognize that principle."

It is difficult to visualize how far the implications 12
of this line of reasoning would go, if it were embraced by the Board, but in any event it clearly was not the basis for decision in Case USC-1317.

The source of confusion seems to lie in a failure to 13
distinguish between recall of employees to fill non-temporary vacancies of the sort which fall under Section 13-A of the Basic Agreement, and the filling of unexpected temporary vacancies, caused by absence of individual employees, which fall within the scope of Section 13-F.

In Case USC-1317 an increase in operating level resulted 14
in a Management decision to organize a third shear crew because the two crews originally scheduled could not turn out enough production. The third crew was organized by recalling incumbents to the various jobs in accordance with their seniority rights under Section 13-A-2 of the January 4, 1960 Agreement.

The grievant in Case USC-1317, therefore, was not assigned to fill a temporary vacancy in accordance with Section 13-F; he simply was recalled to a job, from which he had been demoted earlier, when operations increased to a point requiring organization of an additional crew. In Case USC-1317 the Company specifically argued that the recall there in issue was not an assignment to fill a temporary vacancy under Section 13-F; the Board accepted this contention as valid. 15

The criteria for filling temporary vacancies under Section 13-F are not the same as those which govern recalls under Section 13-A-2. Section 13-F reads: 16

> "In cases of temporary vacancies involving temporary assignments within a seniority unit, the Company shall, to the greatest degree consistent with efficiency of the operation and the safety of employees, assign the employee with longest continuous service in the unit, provided such employee desires the assignment. Such temporary assignments shall be regarded as training by which the Company may assist employees older in service to become qualified for permanent promotion as promotion may be available."

This language spells out that temporary vacancies are regarded as a means of providing employees, who are "older in service," an opportunity to acquire training and experience so as to become qualified for ultimate promotion in accordance with Section 13-A, "provided such employee desires the assignment." If no eligible and reasonably available employee desires to fill an assignment which falls under Section 13-F, then Management can direct an employee to fill it, subject to compliance with any other provisions of the Agreement which might apply. 17

In the present case, Management directed grievants to fill the temporary vacancies without regard to Section 9-J-3, on the assumption that it could require them to do so because they had seniority rights to fill non-temporary vacancies on such jobs under Section 13-A. Serious difficulty with this approach is reflected particularly in the case of Grievant Reay, who had no occupational service on the Wharfman job, nor did he have any occupational service on any other job in this promotional sequence. Hence, the Company is forced to rely on an assertion that Reay had "a seniority claim to the Wharfman vacancy under the Local Seniority Agreement since he was the oldest available Laborer at that time and thus entitled to the vacancy..." This reasoning assumes--contrary to fact--that an employee must accept a promotion for which he is eligible under Section 13-A. 18

Much the same may be said as to Grievant Baum; he had no established occupational date on the Class 7 Quencher Car Operator job, but had one on the lowest job in the sequence in Class 3 (Wharfman). Recognizing that Baum had no incumbency on the Quencher Car Operator job, or recall rights to it for purposes of Section 13-A, the Company relies ultimately on the assertion that "he had preferred seniority rights" to the Quencher Car Operator job. 19

Grievant Johnson had an occupational date as Lidman (Class 6), and so (under a Supplement to the Local Seniority Agreement) was entitled to assert a recall right to the Wharfman job because it was a lower ranking job in the same promotional sequence, for purposes of Section 13-A-2. Johnson's case, therefore, does serve to illustrate better the Company's basic contention "...that the right to the vacancy carries a correlative duty to accept it without reference to or application of Section 9-J-3." 20

As already noted, this proposition erroneously fails to distinguish between non-temporary vacancies under Section 13-A and temporary vacancies under Section 13-F. It also overlooks the fact that employees may have rights which they are not required to exercise, where the Agreement specifies or implies a choice on the part of the individual. 21

Thus an employee is not obliged to apply for a promotion for which he might be eligible under Section 13-A. Nor does Section 13-A-2--standing alone--require the Company to recall an employee or oblige an employee to accept a "recall" to fill a temporary vacancy of one day's duration which comes within the scope of Section 13-F. There is no claim here of any local agreement or long established practice which might contemplate filling certain defined types of temporary vacancies by a recall rather than by application of Section 13-F; nothing in this Opinion is intended to pass upon such an established local arrangement. 22

Grievants here each had greater continuous service than other Laborers who did not wish to fill the temporary vacancies, none of whom was directed to accept the temporary assignments. Grievants thus were assigned temporarily at Management's direction. Since at the time they were working, and otherwise would have worked as Laborers in accordance with their seniority rights under Section 13-A and the Local Seniority Agreement, it seems clear that Section 9-J-3 applies. 23

AWARD

The grievance is sustained. 24

BOARD OF ARBITRATION

Sylvester Garrett, Chairman