

3-3-1971

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

Sylvester Garrett
Chairman

Edward E. McDaniel
Assistant to the Chairman

Follow this and additional works at: http://knowledge.library.iup.edu/garrett_series

Recommended Citation

Garrett, Sylvester and McDaniel, Edward E., "United States Steel Corporation Geneva Works and United Steelworkers of America Local Union 2701" (1971). *Arbitration Cases*. 70.
http://knowledge.library.iup.edu/garrett_series/70

This Article is brought to you for free and open access by the Sylvester Garrett Labor Arbitration Collection at Knowledge Repository @ IUP. It has been accepted for inclusion in Arbitration Cases by an authorized administrator of Knowledge Repository @ IUP. For more information, please contact cclouser@iup.edu, sara.parme@iup.edu.

BOARD OF ARBITRATION

Case No. USS-8034-S

March 3, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Geneva Works

and

Grievance Nos. SGe-70-20;
-21

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Subject: Alleged Improper use of Temporary Foremen

SGe-70-20

Statement of the Grievance: "We, the undersigned people of the Open Hearth protest the action of the Company in returning a Foreman into the hourly ranks. This is in direct violation of Section 2 of the agreement.

"We request that steps be taken to correct this problem immediately."

Statement of the Grievance: SGe-70-21
 "I, Allan S. Kay, feel the Company is in violation of Section 2-5-b-2 of the Agreement when they returned a Foreman back to the hourly ranks and layed me off.

"I request reinstatement to the job with all lost money be payed me retroactively. Also that this problem be corrected promptly."

Contract Provision Involved: Section 2-A-5-b of the Basic Labor Agreement dated August 1, 1968.

<u>Grievance Data:</u>	<u>Dates</u>	
Grievances Filed:	<u>SGe-70-20</u> 2-16-70	<u>SGe-70-21</u> 2-17-70
Step 2 Meeting:	3-4-70	3-4-70
Appealed to Step 3:	3-18-70	3-18-70
Step 3 Meeting:	3-25-70	3-25-70
Appealed to Step 4:	5-13-70	5-13-70
Step 4 Meeting:	7-10-70	7-10-70
Appealed to Arbitration:	9-11-70	9-11-70
Case Heard:	1-20-71	1-20-71
Transcript Received:	None	None

Statement of the Award: With respect to grievance SGe-70-20, the grievance is sustained to the extent that Management is directed to cease and desist from improper retention of bargaining unit employees in temporary foreman jobs beyond the period set forth in Section 2-A-5-b of the Basic Labor Agreement.

Grievance SGe-70-21 is denied.

BACKGROUND

USS-8034-S

These grievances from Geneva Works' Open Hearth Maintenance Department present claims (1) that Management improperly retained a bargaining unit employee in a temporary Foreman position for a period in excess of ten months, and (2) that Management improperly laid off grievant upon return of the temporary Foreman to his regular job. Specifically, violation of Section 2-A-5-b is alleged, with removal of the temporary Foreman from the bargaining unit and/or return of grievant thereto without loss of pay sought as an appropriate remedy.

1

The facts in this case briefly and adequately are set forth in lower step Grievance Procedure Minutes as follows:

2

"These two grievances from the Open Hearth Maintenance Welder Unit protest Management's action in returning a temporary Foreman to his bargaining unit job of Welder, which resulted in another Welder with less service being laid off. In the processing of these two grievances, violation of Section 2 of the Basic Agreement has been alleged.

"H. Erickson, Welder in the Open Hearth Maintenance Unit, was assigned as a temporary Foreman in the latter part of 1968, and was returned to his regular job of Welder in the bargaining unit on 2-16-70. This resulted in Welder, D. Spencer /or *grievant/ being laid off on 2-21-70."

* Evidence adduced at the hearing is not entirely clear as to whether D. Spencer or grievant S. Kay directly was affected as the junior unit employee displaced. For purposes herein, it will be assumed, without so finding, that S. Kay, the grievant, was that employee.

The evidence shows that employee Erickson, a Welder, was assigned and retained as a temporary Foreman for a period of about fourteen months (after January 1, 1969, the effective date of limitations on temporary Foreman assignments under Section 2-A-5-b of the August 1, 1968 Labor Agreement--though in total for about two years) ending on or about February 16, 1970. Management thereupon returned Erickson to his regular unit job, and grievant Allan S. Kay then was laid off as a displaced junior Welder in the seniority unit.

It is the position of the Union that employee Erickson properly should not have been returned to the bargaining unit, and further, that grievant Kay properly should not have been laid off as a direct result of the return of Erickson. The Union urges that it had been led to believe that Erickson either had been, or would be, given a regular Foreman position. A principal Union witness at the hearing, thus, reported, in effect, that he earlier had been approached by local supervision and advised that it intended to make Erickson a regular Foreman. According to the Union witness, in reliance upon such statement of intentions, he, as Grievance Committeeman, had not objected to use of Erickson beyond the contractual ten-month period. The Union witness, moreover, allowed that during his discussions with local supervision, no claim was made by Management that it considered its extended use of Erickson justified under the Agreement. The Union witness did, however, admit that neither he nor other Union representatives, to his knowledge, ever expressly were told that Erickson actually was assigned by Management to a regular Foreman position. The Union and grievants yet claim that Erickson improperly was returned to the bargaining unit by Management and that grievant improperly was displaced by him under Section 2-A-5-b of the Basic Labor Agreement.

At the hearing, as throughout these proceedings, Management denied any violation of the Agreement. It reaffirmed its position as set forth in detail in its brief as follows:

5

"Welder, Harold Erickson, did not lose his bargaining unit seniority rights as a result of his assignment as a temporary foreman, with the knowledge and acquiescence of the Union, approximately four months beyond the ten-month period set forth in the Labor Agreement.

"Harold Erickson is a Welder and a bargaining unit employee. He is and always has been an 'employee' within the scope of Section 2 of the Labor Agreement as it applies to bargaining unit employees, but not to individuals occupying 'supervisory positions of foreman level and above.' (See Section 2-A, August I, 1968, Labor Agreement.)

"The record shows clearly that Mr. Erickson never has been assigned permanently as a foreman, nor has he indicated in any way any intent to relinquish his Welder or other bargaining unit seniority rights. Indeed, the express language of Section 2-A-5, both before and after the new provisions of 2-A-5-b-2, makes it clear that '...an employee who is assigned as a temporary foreman...shall not cease to be an employee, although assignment to such

"position and the terms and conditions of employment applicable to the position shall continue to be solely as determined by the Company.' Such language, the Company submits, is not nullified--expressly or by implication--by the limitations upon temporary foreman assignments which became effective January 1, 1969 by virtue of Section 2-A-5-b in the August 1, 1968, Labor Agreement.

"Those limitations apply to activities by Management in the assignment of temporary foremen, but they do not operate to change or eliminate the seniority rights of employees so assigned, particularly where--as here--the additional period of assignment was explained to, known by and acquiesced in by the Union.

"The record is clear that Mr. Erickson never was assigned as a regular Foreman, although Union evidence indicates that the Open Hearth General Foreman said that he '...wanted to make Erickson a Foreman some day.' And, that the Union '...had the impression Management was going to make a regular Foreman out of Erickson.' (Company Exhibit 2, P. 3.) Such evidence, in the view of the Company, cannot override the actual facts and operate to deprive Mr. Erickson of his long-established bargaining unit seniority rights.

"Finally, the Union contends that Erickson's assignment as a temporary foreman was in violation of Section 2-A-5-b and that such an assignment beyond ten months makes him a 'regular' foreman. (Company Exhibit 4, p.4) Such a position, in the opinion of the Company, is untenable and in direct contradiction to the express language of the Labor Agreement. The Company has explained the circumstances which resulted in Erickson's assignment as a temporary foreman, as well as those which resulted in his return to his regular Welder Job.

"It does not appear from the record in this case that there existed a good faith belief on the part of the Union that the assignment of Erickson to temporary foreman status did in fact violate Section 2-A-5-b. If so, a question as to propriety should have been raised in the beginning-or even at the time of discussion at the end of the ten month period. Instead no objection to the propriety of assignment was raised until Erickson was returned to his bargaining unit job. But even assuming that Mr. Erickson's assignment as a temporary foreman was improper or improperly lengthy, it does not convert his status from a temporary to a regular foreman position. The appropriate remedy in such circumstances is a cease and desist order such as was issued by the Board in Cases USS-7676-S

"and 7680-S, both issued in 1970 after the new language of 2-A-5-b became effective. If the parties had intended the drastic consequences here sought by the Union, they would have so provided at the time the new language of that section was inserted in the August 1, 1968, Labor Agreement."

Principal Company witnesses testified at the hearing to the extent that during conversations with Union representative Paulowski it never was stated that temporary Foreman Erickson actually would be made a regular Foreman. It was admitted by one witness, however, that he, Erickson, indeed, would be recommended for a regular Foreman position. And, notably, Company witnesses candidly testified that Management's extended use of Erickson was not discussed with the Union, in terms of any 2-A-5-b "justification" and, moreover, that its use of Erickson beyond the ten-month limitation was not based on anything "significant in the way of operational changes." At the hearing, therefore, as during the lower steps of the Grievance Procedure, no real evidence was presented on the question of whether the extended use of Foreman Erickson in the temporary Foreman job beyond the ten-month contractual limitation was justified under the Agreement.

FINDINGS

Many years ago in Geneva Works Case No. G-21, concerning the right of a demoted Foreman to return to the bargaining unit and there fill a production job which otherwise would have

been filled by an employee already in the unit, the Board upheld the Union claim of violation of seniority rights of affected unit employees. In the instant case, however, no claim is made, nor does the evidence otherwise establish that the employee Erickson ever was promoted to "regular" Foreman in the sense that he lost all rights as a member of the bargaining unit.

Upon the somewhat limited evidence of this record, we are persuaded that Management's extended use of employee Erickson in the temporary Foreman position was not justified and, therefore, on its face appears in contravention of Section 2-A-5-b of the Agreement. And, as we have indicated, it likewise does not appear that Erickson, in fact or in effect, ever became a regular Foreman during the involved period.

The question remains, then, whether upon a violation of Section 2-A-5-b Management properly may be required either to (1) retain the affected employee as a temporary Foreman, (2) to promote him to a Foreman position, (3) to lay him off (as a Foreman) if no longer needed, or (4) return him to his regular bargaining unit job without affecting established employment rights or status of other unit employees. This, we believe, covers all the possibilities impliedly left to Management under the somewhat novel remedy theory proffered by the Union.

Since the advent of Section 2-A-5-b and its proscription against unjustified use of bargaining unit employees in temporary Foreman positions, this Board usually has found a direction to cease and desist appropriate in the usual violation. Though it may be that some more forceful remedy would be indicated under circumstances of repetitive conduct on the part of local Management, those circumstances obviously do not exist here. Here, we have at most a singular instance of unjustified retention of a bargaining unit employee in a temporary Foreman position. We see no basis, therefore, upon which to depart from

8

9

10

or even to expand upon what, historically, has been considered the usual and appropriate remedy; namely, a direction to Management to cease and desist from such violation of the Agreement.

That Management here should be required other than to cease and desist from further violation of Section 2-A-5-b, then, simply is unwarranted. Moreover, that a return of the improperly extended temporary Foreman to the bargaining unit, ipso facto, violated seniority rights of less senior bargaining unit employees displaced thereby, is wholly untenable. Indeed, the record is entirely lacking of evidence to support the claim that grievant's seniority rights here (as a unit Welder employee) have, in any way, been violated or jeopardized.

Upon the foregoing, and upon the entire evidence presented, we conclude and find (1) that the retention of employee Erickson as a temporary Foreman was contrary to Section 2-A-5-b of the Agreement, and (2) that the return of temporary Foreman Erickson to his regular bargaining unit job did not violate seniority rights of grievant or any other unit employee, as alleged. The grievance herein pertaining to the alleged improper use of a bargaining unit employee as a temporary Foreman, therefore, will be sustained, and the grievance herein pertaining to the alleged violation of seniority rights, thus, will be denied.

AWARD

With respect to grievance SGe-70-20, the grievance is sustained to the extent that Management is directed to cease and desist from improper retention of bargaining unit employees in temporary foreman jobs beyond the period set forth in Section 2-A-5-b of the Basic Labor Agreement.

Grievance SGe-70-21 is denied.

9.

USS-8034-S

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



Edward E. McDaniel
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman