

7-20-1965

# United States Steel Corporation Heavy Products Operations South Works and United Steelworkers of America Local Union 65

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## Recommended Citation

Garrett, Sylvester, "United States Steel Corporation Heavy Products Operations South Works and United Steelworkers of America Local Union 65" (1965). *Arbitration Cases*. 338.  
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BOARD OF ARBITRATION

Case No. USS-5126-H

July 20, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
HEAVY PRODUCTS OPERATIONS  
South Works

and

Grievance No. HS-64-45

UNITED STEELWORKERS OF AMERICA  
Local Union No. 65

Subject: Grievance Procedure - Effect of Grievance Settlement;  
Rates of Pay - Errors in Application of Rates of Pay

Statement of the Grievance: "The Union on behalf of all employees of the Blast Furnace Maintenance request the Management to comply with the Basic Labor Agreement April 6, 1962 as amended June 26th, 1963 Sections 1, 2 and 9.

"On March 10th, 1957, Management installed an incentive plan to cover the Maintenance employees. The Company was directed by the Board's decision USC-726. To increase the earnings by 7%. Management on their own volition misapplied the Board's ruling. As a result of that Management now claims they have over paid some employees and underpaid others. Management illegally is recovering money from employees who were supposedly over-paid, without giving a detail audit to the employees and Union.

"To cease recovering the monies. To return all monies recovered up to date and to give detail audit to each employee and the Union, covering the time period from March 10th, 1957 to the present time."

2.

USS-5126-H

This grievance was filed in the  
Second Step of the grievance procedure June 22, 1964.

Contract Provision Involved: Sections 6 and 9-H of the April 6,  
1962 Agreement, as amended June 29, 1963.

Statement of the Award: The grievance is denied.

BACKGROUND

Case USS-5126-H

This case questions the Company's right to recoup incentive overpayments made under the terms of a grievance settlement reached in Step 4 on January 9, 1963, affecting employees working under Incentive Application 2000-911 covering maintenance indirect crews in the Blast Furnace Department of South Works.

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On September 11, 1958, the Board issued its Award in Case USC-726 in which employees of the Blast Furnace Maintenance crews had questioned the equitability of incentive compensation generated by Incentive Application No. 2000-911. The Award of the Board, in its entirety, provided as follows:

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"1. Earnings received by grievants under the disputed incentive fall short of constituting equitable incentive compensation.

"2. To constitute equitable incentive compensation the earnings yielded by the disputed incentive (Index of Measured Performance) should have been 7% higher than actually provided; this determination excludes the effect of the minimum guarantee of base rate derived from Section 9-B-2-b of the Agreement and gives no weight to additional earnings derived from applying the Temporary Allowance Table.

"3. The employees affected are entitled to an adjustment in their incentive earnings sufficient to bring such earnings up to the level of equitable incentive compensation here specified, retroactive to the date the new incentive was put into effect."

Upon receipt of this Award, Management reviewed incentive earnings since installation and came to the conclusion that the incentive yielded particularly low earnings during reduced levels of blast furnace operations, but that the performance had been satisfactory at high levels of operations. Therefore, it engineered Change No. 1, effective November 30, 1958, and retroactive to date of installation, increasing standards for low levels of operations by more than 7%, netting, for the retroactive period, an average increase of about 10%. The Engineers believed that such an adjustment was in compliance with the Board's Award. They also hoped that, under the new standards, earnings would be less erratic and more satisfactory for the employees. As a result of Change No. 1, retroactive payments, exceeding \$53,000, were made on February 7, 1959.

Grievants disagreed with the Company's implementation of Case USC-726 and filed Grievance A-59-20 on April 6, 1959, insisting that the Company compute the Index of Pay Performance under the original standards for each pay period and adjust it by 7%. In the early stages of their discussions, the parties explored in detail how incentive earnings, computed under Change No. 1, compared to those under the method of adjustment proposed by the Union. Detailed work sheets were made available to the Union by Company personnel; it was understood that the Union's method of adjustment would result in higher earnings during high levels of operations while the Company's method of adjustment would be more advantageous during reduced levels of operations. The Company also made it clear that, should it accede to the Union's demand, it would have to recalculate earnings from the day of installation of the incentive, and that such recomputation would result in the payment of additional earnings to a few employees and in recoupment from a large number of employees. Such recoupment would affect mostly long-service employees who, on the basis of their seniority, had worked during the low levels of operations during the retroactive, and subsequent periods.

During the extended grievance discussions, the Union representatives acknowledged that the Company could plan to make both overpayments and recoupments in settlement of that grievance, but expressed their opinion that recoupments were not permissible since the Company had applied the Board's Award in USC-726 erroneously, and since payments under Change No. 1 did not lend themselves to adjustment under the provisions of Section 9-H of the Basic Agreement.

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Management, in the meantime, had read the Board's Award in Cases USC-896, -898, -899, issued on May 15, 1962, which indicated in marginal paragraph 26 that incentives, which are to be liberalized by a specific percentage, should be adjusted at all levels of operations. This persuaded Management of the validity of the Union's claim in A-59-20, but it did not overlook the following language of the Board in marginal paragraph 29 of the same Award:

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"Thus it is apparent that an entirely new recalculation of earnings, under properly revised standards now is required, both for the future and retroactive periods."

After further negotiations, the Company offered new standards in settlement of the grievance. This offer was submitted by the Union representatives to the affected employees for a vote, and accepted.

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Thus, Grievance A-59-20 was resolved with the following decision in Fourth Step on January 9, 1963:

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"The Company will revise South Works Incentive Application No. 911, covering Blast Furnace Maintenance Crews, in strict conformance with the award of the Board handed down in Case USC-726; earnings paid under this

"incentive from March 10, 1957 will be recalculated with additional payments to be made to the employees whose incentive earnings were less than they would have been if a strict and literal application of the Board's Award had been made and recovery by the company will be made from employees who were overpaid."

(Underlining added.)

This settlement was signed on March 13, 1963.

When the first recoupments were made pursuant to the settlement, the Union filed the grievance underlying this case. 9

The Union representatives who were instrumental in resolving this grievance understood fully that the Company would make additional payments and recoupments. But, as stated in the course of the grievance discussions on A-59-20, they intended to file a new grievance and to question the legality of recoupments. The Company, on the other hand, believed at the time the settlement was negotiated that the Union had abandoned this intention, and that the decision as stated in the Fourth Step minutes was fully accepted by the Union, including agreement to wage recoupments. 10

#### FINDINGS

The Union maintains that it does not seek to question or to upset the settlement of Grievance A-59-20. It simply questions the authority of the Company to make wage recoupments under these circumstances. It regards the settlement merely as acknowledging the Company's decision to make recoupments, without agreeing to their legality. 11

The Company, on the other hand, argues that the decision of the Company, as set forth in the Step 4 minutes and concurred to by the Union, is a binding agreement including consent to wage recoupments.

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There can be no doubt that the Company and Union could properly make the grievance settlement in A-59-20. It spells out in great detail how the dispute was to be resolved; the Union understood fully how it would be implemented by the Company; and the Company followed it to the letter.

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The settlement in Grievance A-59-20 shows the acquiescence of the Union to the proposed recoupments on its face. If the Union had any doubts as to their propriety under prior Board Awards, it should have appealed Grievance A-59-20 to arbitration. The question of recoupments was part and parcel of the settlement and did not arise, as argued by the Union, for the first time when actual recoupments were made. Therefore, the parties are bound by the settlement, and the grievance cannot be sustained.

14

AWARD

The grievance is denied.

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



Peter Florey  
Assistant to the Chairman

Approved by the Board of Arbitration



Silvester Garrett, Chairman