12-15-1964

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

Sylvester Garrett

BOARD OF ARBITRATION

Case No. A-1031

December 15, 1964

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WIRE OPERATIONS
Cuyahoga Works

and

Grievance Nos. CC-1791;
-1799;
-1800

UNITED STEELWORKERS OF AMERICA
Local Union No. 1298

Subject: Scheduling; Overtime; Crew Size

Statement of the Grievance: Grievance No. CC-1791

"We the employees and the plant grievance committee of Cuyahoga Works, charge management with the violation of the April 6, 1962 Agreement.

"Facts: Management deviated from a Monday morning 7:00 A.M. five consecutive day schedule. They installed a four crew 20 and 21 turn operation, without an agreement with the plant grievance committee.

"Remedy Requested: To revert back to a Monday morning 7:00 A.M. schedule requesting retroactive pay at time and one-half for the days which would have been our sixth and seventh days of our normal Monday morning 7:00 A.M. start up schedule."

This grievance was filed in the Third Step of the grievance procedure May 16, 1963.

Grievance No. CC-1799 (Item No. 4)

"We the employees of #1 Rod Mill claim Management is in violation of Section 9 and 2-B of the 4-6-62 Agreement.

"Facts: Management installed 4 crew 20 turn operation without Mutual Agreement with the Grievance Committee and in using inexperienced employees have greatly reduced our earnings.

"Remedy Requested: We are requesting to be paid average earnings based on the 2 previous months earnings, and to continue until such time as these new crews are able to earn at our previous standards."

Grievance No. CC-1800 (Item No. 5)

"We the employees on No. 1 Rod Dock charge Management with the violation of the April 6, 1962 Agreement.

"Facts: By Management putting on the 4 crew 20 turn operation without mutual agreement. Management had cut our earnings by placing inexperienced men on jobs that require a considerable amount of training.

"Remedy Requested: We request retroactive pay at average earnings based on a 3-month period before going on the 4 crew operation."

These grievances were filed in the Third Step of the grievance procedure September 13, 1963.

Contract Provisions Involved: Section 2-B-3 of the April 6, 1962 Agreement and a Special Agreement.

Statement of the Award: Grievance CC-1791 is sustained and Grievances CC-1799 and -1800 are returned to the parties in light of the Opinion.

BACKGROUND

These three grievances from Cuyahoga Works (formerly in the American Steel & Wire Division) bring to the Board the sixth case involving an agreement customarily referred to as the Hoyt-Maloy Agreement of September 27, 1943. The Agreement, as written, applied only to "Works in the Cleveland District" and was signed by A. J. Hoyt for the Company and Elmer J. Maloy for the Union on October 1 and October 5, 1943, respectively. 1

Sections 4-A-C-1-(c) and 4-A-C-2-(b) of the September 1, 1942 Basic Agreement provided overtime payments for "hours worked on days worked in excess of 5 days in a week" and presented difficult problems of interpretation in light of World War II Presidential Executive Order 9240 which was intended to discourage overtime payments under certain conditions. The Hoyt-Maloy Agreement reads as follows: - 2

"SUBJECT: Payment of time and one-half for sixth scheduled work day when the employe has been absent one or more of the preceding five days of the work week.

DECISION: Whereas it is desired to reduce to writing what is alleged to have been a practice or custom prevailing on and prior to October 1, 1942, in plants of the American Steel & Wire Company located in the Cleveland District, the following agreement was made with respect to such plants and only such plants and shall not be regarded as an alteration, change, extension or amendment of the Labor Agreement of September 1, 1942, except as an interpretation applicable to such plants.

It is mutually agreed that the following interpretation will be applied under Section 4-A - Overtime, where an employe is required to work on the sixth day of the workweek and has been absent one or more of the preceding five days of the workweek.

"

A. If the employe is absent at his own request or for personal reasons, the Company will not be obliged to pay time and one-half for the sixth day.

B. If the employe is absent one or more days at the request of the Company, except for breakdowns and acts of God, he shall be paid time and one-half for the sixth day.

C. By mutual agreement between the plant Grievance Committee and the local plant management, an employe who has been absent one or more days due to breakdowns or acts of God may complete his regularly scheduled work-week without the payment of time and one-half."

Previous Hoyt-Maloy arbitration cases bear the following docket numbers and award dates: -

A-113	March	31,	1947
A-207	April	16,	1948
A-217	October	12,	1948
A-349	July	14,	1949
A-352	July	14,	1949

UNION CONTENTIONS

The Union alleges that the Company violated the Hoyt-Maloy Agreement and Section 2-B-3 of the April 6, 1962 Basic Agreement when it unilaterally installed a 4-crew 20-turn schedule in the No. 1 Rod Mill and related facilities on

May 12, 1963, contending that this installation, absent mutual agreement of the parties, is barred by the contractually protected local working condition and by the Hoyt-Maloy Agreement as it has been interpreted over the years. The practice has been for the parties to confer together and agree prior to institution of a 4-crew 20-turn schedule. This has been done consistently during the 13 or 14 years that have elapsed since the last Hoyt-Maloy decision. Prior to 1949 the meaning and effect of the Hoyt-Maloy Agreement--in the minds of local representatives, although not in the minds of Internal representatives--was shrouded in mists of uncertainty resulting from Management's alleged manifest unwillingness to conform to the Board's reasoning as early as A-113. Subsequent to 1949, the local Union has assuredly adhered to the position that "Monday morning is our first day of the workweek....If we were scheduled any other morning, we would be paid time and one-half for Saturday as such."

5 The Union concedes that there are agreed upon exceptions to the normal 3-crew 15-turn schedule, starting Monday each week, and these exceptions are rooted in the necessity for manning certain facilities on an around-the-clock basis for reasons of efficiency and, indeed, continuation of operations at Cuyahoga Works. Standby crews at the Power House and the Pump House, some Maintenance men, and such operations as Electric Annealing and the old Box Annealing, when they were continuous operations, fall within this category.

6 Since 1949 the Union has, on occasion, "gone along" with a 4-crew 20-turn operation when Management has suggested it and has usually exacted concessions, considered suitable or desirable by the Union, in exchange for agreement. It has also agreed, on a one-shot basis, to working the men on Saturday at straight time--as it did during Christmas week, 1962 when a snow condition interrupted production.

7 The Union notes that Cuyahoga Works is essentially a 3-crew 15-turn mill. Departures from a normal Monday through Friday--7:00 a.m. Monday until 7:00 a.m. Saturday--schedule are minimal. Since 1954 not more than 30 people out of a work force in excess of 2,000 have worked a 4-crew 20-turn schedule

at any one time, with the single exception of a 2-month interval when approximately 70 people in the Normalizing Department worked on a 4-crew 20-turn basis by mutual agreement.

8

Thirty-one year employee Sulkowski, President of the Local, Chairman of the Grievance Committee, and Committeeman for the Cold Reduction, testified to an example of how negotiations are commonly conducted. Pursuant to a Management desire expressed in January and February, 1963 to install a 20-turn schedule for Welded Fabric in the Wire Mill, Magnaglo, the 4-Hi Mill, and the Spheroidizing Department, the Union agreed with the Company that business conditions then obtaining prompted the committee to "go along with the Company but with certain stipulations"--namely, that the men would receive a 5-day workweek, that holidays during 20-turn operations would be worked, and that the "payday would be advanced one day in case anybody wanted to pick it up when he wasn't scheduled to come out on payday."

9

Staff Representative Horan testified that he has knowledge of the negotiation of the Hoyt-Maloy Agreement and the five previous arbitration cases resulting from it. After the last Hoyt-Maloy arbitration award, A-352, the late Mr. Murray called a special meeting at the instance of Mr. Maurice and Mr. Levitsky, who, according to Horan, were irate about Management's repeated attempts to retry before the Board an issue that had been repeatedly decided and reaffirmed by the Board. The result of the meeting (apparently held in early 1950 and attended by Messrs. Murray, McDonald, Maurice, Levitsky, Fischer, Maloy, Bral, Horan, the President of the Local Union, and the Chairman of the Grievance Committee) was submitted by registered letter to the mills in the Cleveland area and informed Management "that the next attempt on their part to violate the Hoyt-Maloy would result in a complete shutdown." Union Exhibit B is a letter to General Superintendent Jenter of Cuyahoga Works under date of March 31, 1950 and apparently is signed by the Committeemen of Local 1298. It states, in part, that the Union shall "henceforth insist on the payment of overtime on the days on which such overtime is automatically due under the Hoyt-Maloy Agreement in the absence of mutual agreement or understanding to the contrary."

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All went well until May, 1963 when Management installed a 4-crew 20-turn schedule in the No. 1 Rod Mill and related facilities over the Union's specific objection.

COMPANY CONTENTIONS

The Company asserts that 4-crew 20-turn operations have been known at Cuyahoga Works since the 1930's. The Hoyt-Maloy Agreement and the Board's five awards were directed exclusively toward a 3-crew 15 turn schedule and did not purport to rule on, interpret, change, or restrict existing 4-crew 20-turn schedules or emasculate Management's future prerogative to install such schedules if and when needed in Management's judgment. This has been Management's stance since 1943. It has, over the years, switched back and forth from 3 to 4-crew operations without paying overtime under the Hoyt-Maloy Agreement. Numerous examples, the following among them, are cited. 11

1. Management scheduled on a 4-crew 20-turn basis in the Cold Roll Division in 1946. A strike resulted; discipline was administered; the propriety of the discipline was ruled on by the Board in Cases A-102 and A-103. The decision of the cases made no reference to unilateral installation of the 4-crew 20-turn schedule which, indeed, continued in effect for a year.

2. In Grievance CC-1160 (1946) the Union specifically agreed that "Management has a right to schedule 20-turns if there is enough work to maintain such a schedule." The grievance was withdrawn in November, 1947.

3. Grievance CC-1206 (1947) protested "20-turn schedules as such, claiming that they were non-normal schedules." The grievance was subsequently withdrawn.

4. A memorandum dated June 23, 1950 outlined the Company's position that the Hoyt-Maloy Agreement did not apply to 20-turn schedules and also stated that "20-turn schedules are not agreed to schedules."

5. Grievance CC-1395 (1947) represented a Union request that overtime be paid "under

"certain circumstances for employees then being converted to a 20-turn schedule, but the Union did not question the Company's right to install that schedule." The grievance was withdrawn from arbitration.

6. Grievance CC-1160, occurring only 3 years after Hoyt-Maloy became effective, and presumably when its provisions were fresh in the minds of Union and Management representatives, contains the following quotation -

"The Union agrees that Management has a right to schedule 20 turns if there is enough work to maintain such a schedule. When employees however receive 4 hours work in a 40-hour workweek, or 1 day or only 2 days, the Union contends that such a schedule is inefficient and wonders if Management is not deliberately creating unrest among its employees.... They are in no way challenging Management's prerogative to schedule 20 turns. They admit that Management has this right."

12

Against this background the Company holds that the Hoyt-Maloy Agreement is inapplicable to the present type of situation, and that this has been specifically and repeatedly recognized by the Union. It does concede that it has conferred with Union representatives on several occasions prior to instituting a 4-crew 20-turn schedule. This practice was grounded on a policy of avoiding the arbitrary posture of installing and changing schedules without prior announcement of the reasons motivating Management. In essence, Management was attempting to inform its employees of Management, sales, competition, and modernization pressures affecting schedules. Although Management has recognized the distaste of the men for 4-crew 20-turn schedules when, on occasion, some employees

are working less than a 40-hour week and others might, absent a 4-crew 20-turn schedule, realize overtime, Management has never recognized Union consent as a condition precedent to schedule changes.

Should the Board find that the Hoyt-Maloy Agreement and Board awards based thereon precluded 4-crew 20-turn schedules, absent mutual agreement, the Company argues that the Board nevertheless must find that Section 11-B-1 of the August 3, 1956 Basic Agreement voided the Hoyt-Maloy Agreement by providing that "The payroll week shall consist of 7 consecutive days beginning at 12:01 a.m. Sunday or at the turn-changing hour nearest to that time." This provision cancelled the Hoty-Maloy concept that Monday is the starting day of the week. 13

DISCUSSION AND FINDINGS

It is clear that the Hoyt-Maloy Agreement has generated misunderstandings throughout its career of some two decades. This is apparent from a reading of the five prior decisions and, more particularly, from the hearing transcripts. 14

Seemingly, the Hoyt-Maloy Agreement was intended to codify a past practice in the Cleveland plants and does not appear to have been intended to constitute a new agreement becoming effective in 1943. 15

The decision in Case A-113 does not indicate on its face whether the Board as then constituted was familiar with the asserted fact that 4-crew 20-turn schedules had been in effect at Cuyahoga Works for some years, although this Board is now told that the previous Board possessed such knowledge. In any event, A-113 found that: 16

> "It is clear from this meeting that the Hoyt-Maloy Agreement was entered into to define the status of Saturday as a day worked on the sixth day of a workweek. It is evident, also, that the Agreement presupposed a regular workweek beginning on a Monday of the

"calendar week. It is admitted that the introduction of a schedule beginning on a day different from Monday and including Saturday as a workday would require the mutual agreement of the parties."

17 In its subsequent decisions the Board has not departed from this basic finding even though it has been prodded by the parties in a most searching manner. A frontal challenge was made for the first time in May, 1963 in respect to unilateral installation of a 4-crew 20-turn schedule. The Board is convinced that the local union officers and committeemen at Cuyahoga Works, as distinct from Staff Representative Horan and others associated with the International, did not grasp in its fullest implications the basic finding of A-113 until late 1949 or early 1950, when the International took action to forestall and preclude additional arbitration cases which might be designed to result in a reversal or a significant change in the judgment of the Board of Conciliation and Arbitration that the workweek at Cuyahoga Works begins on Monday morning. This being the Board's view, the Hoyt-Maloy Agreement cannot properly be considered as having been emasculated or nullified by the numerous Company examples and instances of unilateral installation of 4-crew 20-turn schedules even in a framework of specific local Union recognition of such a unilateral Management right in the years between 1946 and 1950.

18 The Board is persuaded that Management understood as of 1950, if not earlier, that the normal schedule was subject to change only by mutual agreement of the parties. Each and every instance of installation of a 4-crew 20-turn schedule after that year occurred only after consultation with the Union and such schedule changes were, in fact, instituted only after agreement had been obtained. The various sessions between Union and Management representatives were surely not restricted to the relaying of Management reasons for changes, since the Union asked for and obtained on several occasions valuable benefits which appear strongly in the nature of consideration for agreement. It is doubtful that these benefits --upgrading of an operator by one job class, right to work on holidays, special arrangement for obtaining pay on non-payroll days, etc.--would have been granted had not Management been under the impression, founded on Board awards and the

March 31, 1950 letter to General Superintendent Jenter, that mutual agreement was essential. 4-crew 20-turn schedules, if considered sufficiently desirable by Management, apparently warranted the giving of some value.

The Board recognizes that scheduling restrictions hamstring Management in an industry where great scheduling flexibility is enjoyed by other mills in the corporation and by competitors. Management's battle for flexibility over the years is a persuasive indication that restrictions are hard to live with. It may well be that there is some merit to Union counsel's opinion that the positions of the parties vis-a-vis scheduling are "essentially negotiating positions and essentially not arbitration positions. If the Company wants to make some changes in the present agreement, the time to do that is in negotiations. It is not to be done through arbitration." It is also possible that a present benefit running to the Union may take on a different coloration over the long haul. Nonetheless, the Board is charged with the responsibility for interpreting and enforcing agreements and practices and the preponderance of the evidence in this record requires that Grievance CC-1791 be sustained. 19

Seemingly Section 11-B-1 of the 1956 Basic Agreement does not purport to change the contractual scheduling section and therefore it did not void the scheduling features derived from the Hoyt-Maloy Agreement or the scheduling local working condition which has been in effect before and since 1956. 20

It would seem that a Section 2-B-3 working condition became effective in 1950 to comply with Board decisions--interpretive of the Hoyt-Maloy Agreement--issued prior to that date. 21

Grievances CC-1799 and CC-1800 are essentially remedy questions involving a claim for payment of incentive earnings for the period when grievants were scheduled on a 4-crew 20-turn basis. At the hearing counsel for both parties determined not to submit evidence and arguments which would enable the Board to reach a finding for these grievances. In 22

the absence of pertinent data, these two grievances are referred back to the local parties with the direction that they confer together and decide which employees are entitled to compensation and the dollar amounts. In the event that agreement cannot be reached on these points, the case may be returned to the Board for a hearing on remedies within 60 days from the date of this Award or the expiration of an agreed upon extension.

AWARD

Grievance CC-1791 is sustained and Grievances CC-1799 and -1800 are returned to the parties in light of the Opinion. 23

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