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BOARD OF ARBITRATION

Case USC-1884

February 5, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Gary Sheet and Tin Works

and

Grievance S-63-19

UNITED STEELWORKERS OF AMERICA
Local Union No. 3008

Subject: Return to Work Following Pregnancy Leave

Statement of the Grievance: "I, Barbara J. Bennett, check No. 1529 request that the company pay me for June 11, 12, 13, 14. I notified the company on May 12, 1963, in writing, of my intentions to return to work (as required by the 1959 Memorandum concerning pregnancy layoff)."

"Facts: Barbara J. Bennett sent a letter, dated 5-12-63, to the Gary Sheet & Tin Mill informing the company that she intended to return to work. Copies of the letter were sent to the Grievance Chairman and Grievance Committee-men. On June 11, G. Mund had not yet been informed of the grievant's intentions. This does not relieve the Company of their responsibility. Barbara was not recalled until 6-17-63. No employee was laid off as a result of her return.

"Remedy Requested: 32 Hours pay @ Class 2 Rate."
This grievance was filed in the First Step of the grievance July 10, 1963.


Statement of the Award: The grievance is sustained.
Gary Sheet and Tin Salaried employee Bennett grieves that Management breached a March 5, 1959 Memorandum of Understanding when it failed to pay her for June 11, 12, 13, and 14, 1963.

The Memorandum is signed by Superintendent of Personnel Services Leeming, Grievance Committee Chairman Harder, and Local Union Vice President Darter, and reads:

"Employees who leave employment on pregnancy lay-off shall be required to contact the employment office within two months following childbirth, and in absence of physical disability, shall be required to return to Company employment. Failure of such person to contact the Employment Office within two months following childbirth or failure of a physically able person to accept recall to Company employment at the expiration of two months following childbirth, shall be treated as a voluntary quit.

"Consistent with work requirements and the application of Section 13 of the Basic Labor Agreement, an employee reinstated following a pregnancy leave shall be assigned to fill any available vacancy in the lowest job level of the unit from which laid off. In the event that no such vacancy exists, she shall be assigned to replace the youngest incumbent of the lowest job class in the unit. Such reinstated employee shall retain full unit and plant service for seniority purposes.

"This agreement cancels any and all prior local agreements, whether oral or written, pertaining to the return to employment of employees following pregnancy leave."

Grievant informed the Company in writing on May 12, 1963 that "This is to inform you that my child, Blythe Leigh Bennett, was born April 11, 1963, and that I intend to return to work June 10, 1963." The Union asserts that this note
fulfilled grievant's responsibility to inform the Company within two months of childbirth of her intention to return to the Company's employ. The condition of notice having been complied with, the Company is obligated to furnish employment on the sixty-first day after the employee has given birth. The Union negotiator of the 1959 Memorandum assumes that Management accepted this responsibility, although in practice some employees have recommenced working on days other than the sixty-first day. The cardinal feature in the Union's reasoning is that an employee who insisted upon returning on her sixty-first day has always been permitted to do so. This is due to the fact that the parties have always regarded the Memorandum as a reciprocal agreement under which an employee is obligated to give notice of intention and the Company, in turn, is required to furnish employment on the sixty-first day or on a later date if the employee in question does not assert her alleged right to work on the sixty-first day.

An employee who fails to notify the Employment Office of her intention to return to work at the expiration of two months following childbirth "shall be treated as a voluntary quit." This is such a serious penalty, in the Union's view, that it must carry with it a Management obligation to furnish employment when the two month period expires. Grievance Committee man Kutch testified that there have been two occasions in the last year when employees have been refused employment after reporting one day late. Witness Kopil testified to an instance when employee Drobac returned one day early—on the sixtieth day—and was told that she could not commence work until the sixty-first day. A weekend intervened, the employee reported for work, and was informed that she had quit. At Drobac's request a grievance was filed and the case was settled to grievant's satisfaction. These instances illustrate the inflexibility with which Management has treated the sixty-first day after childbirth except in certain situations where it was convenient for Management to return employees to work at some later date to coincide with bi-weekly payroll periods or for some other reason.

The Company notes that the March 1959 Memorandum does not purport on its face to require what is here demanded.
The Company contends that there was no contractual obligation on Management to return grievant "on the first workday after the expiration of two months following childbirth." It is not denied that grievant wrote the Employment Office on May 12, 1963 stating her intention to return to work on June 10, but the notification was not relayed to the Engineering Department in timely fashion. It was impracticable for the Company to return grievant to work on June 10 or 11 because her desk was on loan to another Department and her work had to be prepared.

There is no obligation on the Company to furnish work to a salaried employee returning from pregnancy leave before the first day of the biweekly pay period commencing after the sixtieth day, which in the case of grievant was June 24, 1963. Grievant's Committeeman Fengya interceded on behalf of grievant and obtained supervision's agreement to return her to work on June 17.

Company Exhibit 5 is a sampling of female employees reinstated after pregnancy leave. It indicates that several employees returned to work on the sixty-first day, but there is considerable diversity among the others, ranging up to the ninety-second day after childbirth. This indicates to the Company that there is no hard and fast requirement that Management adhere rigidly to the sixty-first day regardless of conditions. A rule of reason has prevailed and this has been recognized by female employees.

FINDINGS

The March 5, 1959 Memorandum of Understanding is a mutual agreement of the parties' responsible representatives, the status of which is not in issue in this case, and upon which both parties here rely.

Absent physical disabilities, the Memorandum imposes upon salaried employees a responsibility for contacting the Employment Office and for accepting employment "at the expiration of two months following childbirth."
Failure of an employee to discharge this imposed responsibility results in a voluntary quit. Both parties have acted on the assumption that such quit could properly be regarded as automatically becoming effective on the first day after the expiration of two months from date of childbirth—i.e., on the sixty-first day.

The grievant's letter of May 12, 1963, her physical ability to work and her tendering of services as of June 11, fulfilled her responsibility to the Company. The letter was timely and was addressed to the proper recipient of notice, the Employment Office. Seemingly there was a failure of communication between the Employment Office and the Engineering Department, but this is not chargeable to grievant.

The basic question before the Board is whether there is a reciprocal, correlative obligation upon the Company to extend employment to an employee on the sixty-first day. The record in toto indicates that there is. True, the Memorandum is not explicit on this point, but it is pregnant with the implication that a job will be available on the sixty-first day. Certainly the Memorandum contains no shred of implication that a returning employee will commence working on the first day of the first biweekly pay period beginning two months from date of childbirth. Nor are specific instances of employees being reinstated anywhere from one to thirty-one days after the two month period conclusive evidence of great Management contractual latitude in setting specific return dates. Perhaps these employees, for reasons unknown, chose not to exercise their rights; they surely did not insist on their rights or this would not be the first case on point before the Board.

In these circumstances the rigid requirement of the local agreement that returning employees submit to specific and detailed notice and physical examination procedures by a known date raises and imposes, in the Board's judgment, a reciprocal requirement that work be made available as of that known date, consistent with the returning employee's applicable seniority rights, and not at some uncertain future date to be selected at Management's discretion. This is implicit in the 1959 Memorandum and must have been tacitly understood by the parties.
AWARD

The grievance is sustained.

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