3-5-1965

United States Steel Corporation Sheet and Tin Operations Gary Sheet and Tin Works and United Steelworkers of America Local Union 3061

Sylvester Garrett

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

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 3061

Grievance No. P-63-1

Subject: Seniority - Return of Excluded Employee to Plant Protection Bargaining Unit.

Statement of the Grievance: "We, the undersigned, in behalf of ourselves and all other affected employees, request that the Company adhere to the local understanding and agreement of applying departmental seniority for promotions and/or demotions and plant seniority for lay-offs and transfers. The Company violated the above mentioned understanding and agreement by granting H. Vogel his plant seniority date to be used as a departmental seniority date."

This grievance was filed in the Second Step of the grievance procedure September 13, 1963.


Statement of the Award: The grievance is sustained.
At issue in this case is the length of continuous departmental service in the Plant Protection Department at Gary Sheet and Tin Works of Employee Vogel, who was returned to a job in the bargaining unit with full departmental and plant service (after having occupied the excluded job of Guard Group Leader for more than seven years) in reliance on Section 13 of the April 6, 1962 Agreement, as amended June 29, 1963, and Section III of the January 28, 1963 Local Seniority Agreement covering Plant Protection employees.

Vogel's employment history is as follows:

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Department</th>
<th>Job</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-22-36*</td>
<td>8-10-41</td>
<td>Sheet Finishing</td>
<td>Various</td>
</tr>
<tr>
<td>8-11-41</td>
<td>9-28-41</td>
<td>Continuous Pickle</td>
<td>Laborer</td>
</tr>
<tr>
<td>9-29-41</td>
<td>11-8-41</td>
<td>80&quot; H.S.M.</td>
<td>Laborer</td>
</tr>
<tr>
<td>11-9-41**</td>
<td>4-28-46</td>
<td>Plant Protection</td>
<td>Guard</td>
</tr>
<tr>
<td>4-29-46</td>
<td>8-4-46</td>
<td>Plant Protection</td>
<td>Fire Inspector</td>
</tr>
<tr>
<td>8-5-46</td>
<td>3-31-56</td>
<td>Plant Protection</td>
<td>Guard</td>
</tr>
<tr>
<td>4-1-56</td>
<td>8-13-63</td>
<td>Plant Protection</td>
<td>Guard Groupleader</td>
</tr>
<tr>
<td></td>
<td>to date</td>
<td>Plant Protection</td>
<td>(excluded job)</td>
</tr>
</tbody>
</table>

* Plant Date (not in dispute)  
** Department Date (in dispute)

Under the Local Seniority Agreement, promotions are governed by Section V-1 which reads as follows:

"When the factors of ability and physical fitness are relatively equal, promotions shall be made in the units listed in Section I, job level to job level, within the promotional sequences, one job level at a time, on the basis of length of continuous service in the department. That is, ability and physical fitness being relatively equal, the employee with the greater length of department continuous service on the job level involved shall be the first employee promoted from a given job or job level."

"When the factors of ability and physical fitness are relatively equal, promotions shall be made in the units listed in Section I, job level to job level, within the promotional sequences, one job level at a time, on the basis of length of continuous service in the department. That is, ability and physical fitness being relatively equal, the employee with the greater length of department continuous service on the job level involved shall be the first employee promoted from a given job or job level."
Force reductions and demotions are governed by Section VI of the Local Seniority Agreement which reads as follows:

"When the factors of ability and physical fitness are relatively equal, any required displacements in the units listed in Section I above shall be made on the basis of length of continuous service in the department; that is, the individual on a given job level with the least continuous service in the department shall be the first individual displaced from that job level in that department. On displacement, the individual shall go down job level by job level, one level at a time, in accordance with existing promotional sequence charts. When such successive demotions leave the individual no departmental continuous service rights superior to those of remaining incumbents in the promotional sequence, the individual shall be deemed to have accumulated continuous service on the lowest job level in the department equal to his continuous service in the Gary Sheet and Tin Mill and shall be laid off from the department in accordance with such continuous service."

Section II of the Local Seniority Agreement dated January 28, 1963, defines departmental service as "length of continuous service within the department" and plant service as "length of continuous service at Sheet and Tin Mill."

Neither party referred to the Local Seniority Agreement in effect at the time Vogel was promoted to the excluded job, if any existed at that time.

The promotional sequence chart for Plant Protection employees is as follows:
3. USC-1903

PROMOTIONAL SEQUENCE CHART

PLANT PROTECTION EMPLOYEES

- Fire Truck Driver (9)
- Fire Equipment Inspector (8)
- Plant Guard (8)

The Union does not question Vogel's plant service date of July 22, 1936 which governs his rights in case of a layoff, since he is in the bottom job level of the seniority unit. It claims, however, that his departmental service date (for purposes of promotion) should be August 14, 1943, the date of his return to the bargaining unit, and not November 9, 1941 when he first transferred into Plant Protection.

The Union urges that the January 28, 1943 Local Seniority Agreement was negotiated to cover employees in the bargaining unit only, and that the provision of Section II, setting forth the definition of continuous departmental service cannot be applied to employees who return to the bargaining unit after the Local Seniority Agreement was negotiated. It also stresses that there was no previous instance involving return of a supervisory or excluded employee to the Plant Protection bargaining unit.

The Company acknowledges the absence of any practice in the Plant Protection Department of Gary Sheet and Tin Mill under which supervisory or excluded employees are returned to the bargaining unit. It maintains, however, that absence of such a practice cannot defeat Vogel's seniority rights since the Local Seniority Agreement covers the point specifically in the definition of departmental service.
In reply, the Union points out that such an application of the definition could confer seniority rights on Supervisors, such as the Superintendent of the Plant Protection Department, who never were members of the bargaining unit.

FINDINGS

The problem here centers upon the reasonable meaning to be given to Section II--Definition of Terms--of the Local Seniority Agreement of January 28, 1963, which reads as follows:

"For the purposes of this Local Seniority Agreement, 'length of continuous departmental service' means length of continuous service within the Plant Protection Department; and, 'length of continuous plant service' means length of continuous service at Gary Sheet and Tin Mill."

The language of the present Local Seniority Agreement appropriately may be read against the background provided by numerous Board decisions concerned with seniority rights of bargaining unit employees who, having been promoted to supervisory or excluded positions, later returned into the bargaining unit. As stated by the Board in USC-1645:

"...it is clear that an employee's moving to Management does not break his continuous service under Section 13-C of the Basic Agreement and that he may use that uninterrupted continuous service upon returning to the bargaining unit for purposes of retirement, vacation, severance, or possibly other benefits. Equally clear, however, is the proposition that the former Supervisor may not return to his former job in the bargaining unit unless that is permitted by an express local agreement or by an established practice, and Management must prove existence of the agreement or practice."
There is no claim here that the Company's position can be sustained on the strength of prior practice. Decision thus turns upon interpretation of the Local Seniority Agreement and the definition of departmental service which (in this particular setting) is of significance only for promotion purposes. In this respect, this case seems to be similar to USC-435 where the Board stated:

"This case does not deal with length of continuous service under 13-C, but only with a determination of service in the unit for promotional purposes as contemplated under Section I of the Local Agreement. An employee's length of continuous service as defined in 13-C may have great value for retirement, vacation, severance pay and other purposes, yet avail nothing for promotional or demotional purposes in a given seniority unit, if a local seniority agreement defines 'unit service' differently from 'continuous service.'"

Section II of the Local Seniority Agreement defines "departmental service" as "length of continuous service within the Plant Protection Department." According to the Company, this language is clear in spelling out what departmental service means. For purposes of the Local Agreement, and requires that all unbroken service in the Plant Protection Department before the Local Agreement was written must be credited to an employee who was outside the bargaining unit when the Agreement was written but subsequently came into the bargaining unit. It is logically possible that the local parties might have so intended, but the real question is whether this interpretation would give reasonable effect to the Local Agreement as a whole. The language of Section II of the Local Agreement cannot be considered without regard to the fact that Section I includes the following:

"SECTION I - SENIORITY UNITS
Seniority Units are hereby established as follows:
1. Plant Protection Department."
Thus, the local parties in Section I used the very term "Plant Protection Department" to define the exact seniority unit for which they were negotiating. This crucial fact seems to bar giving the same words a much broader meaning when used in the immediately succeeding section. Union witnesses who were close to the negotiations testified that they did not expect the interpretation given to the language of Section II by the Company in this case, nor is there any apparent reason in the evidence that they should have so expected. Accordingly, since there is no agreement or practice to support Management's action here, this grievance must be sustained and Vogel's continuous service in the Plant Protection seniority unit for promotional purposes is August 14, 1963.

AWARD

The grievance is sustained.

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

Sylvester Garrett, Chairman