

12-30-1964

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BOARD OF ARBITRATION

Case No. USS-4883-W

December 30, 1964

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WIRE OPERATIONS
Joliet Works

and

Grievance No. JOL-1090

UNITED STEELWORKERS OF AMERICA
Local Union No. 1445

Subject: Local Working Condition - Scheduling

Statement of the Grievance: "We, the employees of the Central Machine Shop, protest Managements action January 11, 1964. #3 Rod Mill and Merchant Mill several departments in Wire Division operated. We remained at home. We are asking to made whole."

This grievance was filed in the First Step of the grievance procedure January 16, 1964.

Contract Provision Involved: Section 2-B of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of the Award: The grievance is denied.

BACKGROUND .

Case USS-4883-W

This grievance was filed by 32 employees of the Central Machine Shop of Joliet Works claiming that the Company has violated a local agreement concerning scheduling.

At the hearing, Fred Schweizer, an Instrument Repairman and the Grievance Committeeman for the Central Machine Shop testified that, in 1951, the products of the mill were in high demand due to the Korean War, and that the three Rod Mills of Joliet Works frequently were working more than 15 turns per week each. Seemingly, it was the practice to schedule maintenance employees for a five-day week, and to add a sixth day when the Rod Mills worked a sixth day. To facilitate this method of scheduling, an agreement was reached with General Master Mechanic Morgan that all maintenance men would be scheduled for a sixth day of work should the Rod Mills work overtime.

Morgan retired between 1951 and 1954 when P. J. Muller was General Master Mechanic. The Company did not call Morgan as a witness but relied on second-hand testimony, casting doubt on the existence of such an agreement.

However, in October of 1954, the alleged scheduling agreement was not followed by the Company, and grievances were filed in JOL-436 by employees working in the Blacksmith Shop and Collins Street Machine Shop, and in JOL-437 by employees working in the Boiler Shop. These two grievances were followed by others as follows: JOL-443, Carpenter and Paint Shops; JOL-460, Millwright-Rigger Gang; and JOL-464, Electrical Department.

These grievances were discussed in Fourth Step by N. W. Dempsey, Manager of Operations of the then Chicago District of the American Steel and Wire Division, and Joseph Pochervina, the Staff Representative of the Union. The grievances were held in Fourth Step for a considerable period of time since Mr. Dempsey undertook a careful investigation of the practices surrounding the scheduling of maintenance employees in the mill. Seemingly, his investigation showed that 65% of all of the workload of the maintenance employees in the Central Machine Shop was generated by the Rod Mills and 35% by the Wire Mills, and that, in a rough pattern, the employees of the Central Machine Shops had worked on overtime 65% of all Rod Mills overtime hours. Therefore, on October 14, 1955, it was stated on behalf of the Union,

"The Union indicated a desire to have this grievance returned to the Third Step. The situation involved in this grievance is working out satisfactorily, and the Union believes that a further discussion in the Third Step will lead to the settlement."

A Third Step meeting was held shortly thereafter on October 25, 1955. The minutes of this meeting show the following summary of the discussion between the parties:

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"The Union stated that the condition referred to in the instant grievance has been much improved since the filing of this grievance.

"As was stated by the Union in the Step 3 meeting of December 2, 1954, the Union does not dispute the fact that the employees in the Blacksmith and Collins Street Machine Shops were properly scheduled five days during the period in question, as this was mutually agreed to by the Grievance Committeeman and the Master Mechanic. However, in the past when the Rod Mills worked six days, all the men were scheduled for five days with the sixth day added on Friday. Therefore, this grievance is not a request for overtime, but a request for the sixth day because the Rod Mills operated.

"Management again denies the existence of any local agreement guaranteeing six days in the Blacksmith and Collins Street Machine Shops when the Rod Mills work six days. There can be no guarantee of hours worked per day or per week. The amount of maintenance and the number of people assigned to maintenance jobs is a matter of Management determination under Section 3 of the Agreement. The aggrieved were properly scheduled for five days, with some employees being scheduled for work on the sixth day.

"Management stated that as long as business continues as it is at the present time, it sees no reason why the present schedule should not continue. However, many things can change or cause changes in the scheduling of the mill, such as appropriation work, business changes, breakdowns, etc. When changes become necessary in the scheduling of Shops, Management will notify the responsible Grievance Committeeman of such changes."

This settlement led the Union to believe that a firm 65% overtime scheduling agreement had been reached, based on Rod Mill overtime hours.

Late in 1955, the Union attempted to extend the settlement reached in these previous grievances to situations when departments other than Nos. 1, 2, and 3 Rod Mills worked overtime. The Union took the position in Grievance No. JOL-531 that a proportionate number of shop people should be scheduled to service these additional departments when they are working on a sixth day on the strength of the 65% arrangement. Management replied that the number of Central Machine Shop personnel scheduled to work had been determined by the amount of maintenance and repair work required, and that the number of personnel in the various shops could be expected to fluctuate over the years. The Third Step minutes of this grievance do not show a flat denial of the Union's understanding of the settlement of the previous grievances. Grievance JOL-531 was discussed in Fourth Step by Messrs. Dempsey and Pochervina on April 19 and 20 of 1956, and the minutes show the following denial of the existence of an agreement:

"The Company denied any agreement regarding the specific number, or percentage, of Central Machine Shop personnel to be scheduled for the sixth day when the Rod Mills worked the sixth day. Employees are scheduled for the sixth day on the

"basis of Management's determination as to the amount of mechanical and maintenance work required. There is no guarantee of hours of work per day, or per week."

Early in 1958, Grievance JOL-763 was filed by employees in the Central Machine Shop because, in a week scheduled originally for four days of work, additional turns were added to the Rod Mill schedule while some Central Machine Shop employees remained on a four-day schedule. In this case, the Company took the position that even though operations were extended to five days, this only resulted in ten-turn operations for two mills, and fourteen-turn operations for the third mill which was eleven mill turns short of full fifteen-turn operations. Therefore, in the opinion of Management, the services of the entire Machine Shop were not needed for a fifth day of work in that week, and the grievance was rejected in Fourth Step. 9

A similar grievance was involved in JOL-814 which was withdrawn by the Union without prejudice in face of the Company's position in JOL-763. 10

In the Spring of 1959, the Union, in Grievance No. JOL-877, again took the position that "in a previous grievance settlement it was agreed that when all the Rod Mills are operating on a Saturday, at least 65% of the maintenance personnel would work." The Union was under the impression that there was a normal complement of ten Blacksmiths, and that only five (or 50%) were scheduled in a given week when the Rod Mills were operating on a Saturday. After the grievance had been appealed to the Fourth Step, the Union found out that in fact there were only eight Blacksmiths in the group since one had been retired and one had transferred to a different department. Thus, five out of eight Blacksmiths, or almost 65% had worked the sixth day, and the Union withdrew this grievance. 11

No grievances were filed between 1960 and the date of the instant grievance of January 11, 1964. 12

The Company attached to its brief the following schedule of Rod Mill turns and actual number of Central Shop men by number of turns per week: 13

Week Ending	ROD MILL TURNS			ACT. NO. OF CENT. SHOP MEN BY NO. OF TURNS/WEEK		
	#1	#2	#3	#4	#5	#6
2/ 2/63	8	8	17		39	2
2/ 9/63	12	12	18		39	1
3/ 9/63	12	12	16		41	
4/ 6/63	15	15	17		19	20
4/13/63	12	12	18		39	
5/ 4/63	15	15	18		17	23
5/11/63	18	18	18		10	31
5/18/63	15	15	18		18	23
5/25/63	12	12	18		41	
6/ 1/63	9	9	18	39	2	
6/ 8/63	15	15	18		18	21
6/15/63	15	15	18		14	21
11/ 9/63	15	15	17		39	

The Union takes the position that it had a firm agreement with General Master Mechanic Morgan concerning the scheduling of Central Machine Shop employees, and that every General Master Mechanic succeeding Mr. Morgan has tried to break this agreement. The first attempt was made by General Master Mechanic Muller and resulted in the settlement of the multiple grievances in 1955; at that time, the Union receded from its previous agreement that 100% of all Central Machine Shop employees be scheduled and, for the sake of settling the grievance, was willing to accept a compromise of 65% scheduling, with a proportionate reduction should less than all three Rod Mills be scheduled for a sixth day of work. The basis for the current grievance was laid in 1962 when R. W. Smedley became General Master Mechanic, and denied the existence of the 65% agreement.

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The Company, on the other hand, states that no agreement concerning a 65% scheduling was ever reached, and that all grievance minutes show a consistent assertion by the Company that the scheduling of Central Machine Shop employees would be solely dictated by the needs of the business. The Company also refers to the actual scheduling of Central Machine Shop employees in selected turns of the year 1963 which show no consistent pattern.

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The Union replies that, in its discussions with the Company, it is without the advice of counsel, and that the members of the Grievance Committee, in Third Step discussions, are without the advice of a Staff Representative. Therefore, minutes of Third and Fourth Step grievance meetings should not be read as technical legal documents but against the background of the actual fact situation and in light of the practical settlement reached by the parties. The Union argues that minutes frequently do not spell out the actual understanding existing between the parties.

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FINDINGS

For many years the scheduling of Central Machine Shop employees has been a source of friction between the parties at Joliet Works. The Union's claim is based on an alleged agreement reached at the Third and Fourth Step level in Grievance JOL-436 in 1955. This, however, was a modification of an agreement allegedly reached in 1951 between the then General Master Mechanic and the Grievance Committeeman for the employees involved. The Board's attention then has first to be directed to the nature and purpose of that agreement.

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It appears from the record that the 1951 understanding was beneficial both to the Union and to the Company. The Union was assured that, whenever the Central Machine Shop would be asked to work a sixth day in a given week, all employees would be included in such overtime, thereby removing a potential source of friction between the employees. The Company, on the other hand, was relieved from scheduling employees in the Central Machine Shop for a sixth day of work when the schedules were posted in the preceding week thereby leaving it at liberty to add a sixth day of work in the last minute on the Friday preceding the overtime Saturday when it became apparent that the Rod Mills also would work overtime. This assured the Company of an adequate maintenance force to keep the mills in good running condition.

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The record also indicates that, when the 1951 agreement was reached, all three Rod Mills usually worked more than 15 turns per week.

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Seemingly, the original purpose for the 1951 agreement had been forgotten in 1954 and business conditions had changed. By that time the men in the Central Machine Shop looked at the "scheduling agreement" as a means to obtain overtime hours in the same proportion as employees working in the Rod Mills; their demand that 65% of Central Machine Shop employees be scheduled proportionately to the overtime turns worked by any Rod Mill, no longer included a corresponding benefit for the Company, since the workload of the Rod Mill had greatly diminished. However, the Company convinced the Union that the employees in the Central Machine Shop had in fact been scheduled roughly in a 65% relationship to Rod Mill overtime hours. In any event, after the grievance had been discussed for about one year, a mutually acceptable settlement was reached to the effect that "as long as business continues as it is at the present time, (the Company) sees no reason why the present schedule should not continue." The Company may have been under the impression that the recent scheduling was satisfactory to the Union, while the Union was under the impression that the Company had agreed to the 65% demand. It is clear that the minutes of the grievance meeting are inconclusive on this central issue.

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The recited history of subsequent grievances indicates that the Company without exception asserted firmly its right to schedule maintenance men in accordance with business demands, while the Union continued to indicate its belief that a 65% scheduling agreement had been reached in 1955.

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Thus, it seems clear that the parties never had a "meeting of their minds" on this issue; but the actual scheduling in the mill supports the position taken here by the Company. Its Exhibit No. 9 shows an "erratic" pattern of scheduling which was not explained by the Union. Therefore, the record does not support a finding that the local agreement relied upon by the Union in this case was observed by the Company in the year preceding the filing of the grievance, and it is not proven that the Company had deviated from an agreed-upon schedule when the grievance was filed.

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8.

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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



Sylvester Garrett, Chairman