

2-19-1971

United States Steel Corporation Rod, Wire and Wire Products Division Fairless Works and United Steelworkers of America Local Union 2670

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Recommended Citation

Garrett, Sylvester and Freund, Alexander M., "United States Steel Corporation Rod, Wire and Wire Products Division Fairless Works and United Steelworkers of America Local Union 2670" (1971). *Arbitration Cases*. 7.
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BOARD OF ARBITRATION

Case No. USS-7392-S

January 19, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
ROD, WIRE AND WIRE PRODUCTS DIVISION
Fairless Works

and

Grievance No. WT-69-9

UNITED STEELWORKERS OF AMERICA
Local Union No. 2670

Subject: Performance of Bargaining Unit Work by Supervisors

Statement of the Grievance: "Management has violated the Agreement of August 1, 1968, Sections 2 & 13 As Checkers and Inspectors we were denied to perform our work to complete the work that has been done by us at different occasions, when reels were shipped to Baltimore's Pier the Management sent foremen to do P&M work.

"Facts: On March 26, 1969 Mr. Willie, Prestress Foreman and Mr. Most, Supvr. in Planning Dept. went to Baltimore to put on markings and stencils on the reels for lrdner No. EB-35680. 2 Railroad cars were shipped - 1 car on 3/11/69 N&W-98206 with 6 reels and 1 car on 3/12/69 PC-534685 with 6 reels and 3 boxes.

"Remedy Requested: To be paid all losses."

Contract Provisions Involved:
1968 Agreement.

Sections 2 and 13 of the August 1,

Grievance Data:

Date

Grievance filed:	April 9, 1969
Step 2 Meeting	April 9, 1969
Appealed to Step 3:	April 18, 1969
Step 3 Meeting:	June 9, 1969
Appealed to Step 4:	August 20, 1969
Step 4 Meeting:	August 28, 1969
Appealed to Arbitration:	October 2, 1969
Case Heard:	March 25, 1970
No Transcript:	

Statement of Award:

The grievance is sustained. The Company shall pay Joseph Sikucinski and Alex Sabo eight hours' pay each at straight time.

BACKGROUND

USS-7392-S

This grievance from the Shipping Department of the Rod, Wire and Wire Products Division of Fairless Works, filed on behalf of Inspector Joseph Sikucinski and Checker Alex Sabo, protests the performance of their work by supervisors as a violation of Sections 2 and 13.

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The work in question was the stenciling of certain shipping information on 12 reels of rope and three boxes shipped in railroad cars in the first half of March 1969 from the Trenton Plant to Baltimore for export to Iran. Two supervisors performed the work in Baltimore. Stenciling is one of the tasks performed by the Checker, and the checking of the stenciled markings is a task included in the Inspector job.

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The Union's position is that the work involved is the kind normally performed by bargaining unit members in the plant, and that Checkers and Inspectors have been assigned to do such work outside the plant since at least 1955, when a car mileage agreement was worked out to cover out-of-plant assignments. The Company contends that there is no such past practice as the Union claims here.

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According to the testimony of one of the supervisors who performed the disputed work, Clarence Most, it is not unusual for export shipments not to have all the shipping information marked on them when they leave the plant, the markings not specified on the order or shipping instructions being added by the customer at the port of embarkation. However, on March 24, while the shipment was at the pier, the Company's International Sales Office notified Supervisor Most that marking by the Shipping Department would be required. Most suggested that the Baltimore Warehouse, a Company facility, mark the shipment. The morning of March 25 the International Sales Office called Most again, informed him that the Baltimore Warehouse did not have sufficient personnel or stencil-cutting facilities to handle the work, and requested Trenton Personnel to mark the shipment.

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Later that day, Most's testimony continues, the International Sales Office wired him the information to be stenciled on the reels

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and boxes, the shipment being due to leave Baltimore the next day. The information wired was the designation identification; that is, identification of the party receiving the shipment (Construction Department, Maintenance of Roads, Imperial Government of Iran), the name of the bridge for which material was intended, and the port of entry.

The stencils were cut at the Trenton Plant by a Checker (Haggerty), according to the second supervisor involved, James Willie, and the two supervisors left the next morning at 7:30 for Baltimore to apply the stencils. Most testified that they were gone almost 11 hours, returning at 6 p.m. It took 1-1/2 hours to stencil the 12 reels and three boxes, Most sorting the stencils in sequence, Willie applying the stencils and both men checking. The remainder of the time they visited the Baltimore Warehouse and the Sales Office.

According to the Union witnesses Sabo and Sikucinski, and confirmed by the Company's testimony, when the reels and boxes left the plant, they did not have stenciled on them any of the shipping information available on the Load Tally/Shipping Notice forms covering the shipment (Union Exhibits 4 and 5). In this connection the Union submits in evidence an excerpt from the Company's Standard Practice Manual, describing the procedure to be followed in marking reel shipments for export. It states that on reels with head diameters of 40 inches and larger, in which category these reels appear to belong, the following information is to be stenciled on both heads rather than carried on export tags: order number, customer's number, gross tare and net weights, reel measurements and customer's mark when specified in the order (Union Exhibit 3).

Supervisor Most explained that these markings were to be put on by the customer, the American Bridge Division, which had the contract for the Iranian project; and that the shipment was being handled in this respect as would that of any other customer. According to Foreman Willie, the order had to be handled first as a domestic consignment on the basis that it was for American Bridge, and the shipping information on the Load Tally/Shipping Notices was carried on metal shipping tags attached to the products.

The Union complained concerning the release of the order without any stenciled markings when it was about to be shipped from the plant, according to the Union's testimony. Inspector Sikucinski raised the matter with General Foreman Yeager, pointing out that the order was being handled as a domestic shipment even though the products were paper wrapped for export in accordance with the shipping instructions; and Local Union President John Meszaros followed up on the complaint. After checking with Foreman Most, Yeager said that American Bridge would put the markings on the shipment. Meszaros responded that it would be wrong for American Bridge to apply the markings, that it was the men's work and that it should be done at Trenton.

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With respect to past practice, Union witnesses Sabo and Sikucinski cite a number of instances in which Checkers and Inspectors were sent outside the plant to perform bargaining unit work. The first occasion occurred in 1955, when Fairless Works was used as a storage area for Trenton Works and bridge wire was being sent there for storage. Sabo testified that supervision intended to send only a Loader to Fairless but he complained that he too should go to Fairless. Inasmuch as Loaders are paid incentive, Sabo was sent with the Loader to record the weights handled by him. Both men traveled between Trenton and Fairless in Sabo's car, and he was paid mileage for the use of the car.

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Sabo went also to the plants of two of the Company's customers (Trenton Spring and L. A. Spring). The customers had complained of a shortage in material shipped, and a supervisor and Sabo visited the two plants to check out the complaint.

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Sikucinski inspected material at the Trenton Marine Terminal, from where wire was shipped to Western Electric. Also, wire stored in this area was cleaned by Trenton employees after a flood. According to Foreman Most, the Company rented space at the Trenton Marine Terminal for storage of its products. Sikucinski also performed inspection work at Colport, Pennsylvania, a Pennsylvania Railroad marshalling yard about two miles from the Trenton Plant. Additional markings had been applied at that site by Checkers and Sikucinski checked the work. The products were in rail cars, which had been pulled from the Plant to the marshalling yard.

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Out-of-plant assignments of other Inspectors and Checkers are mentioned in the Union's testimony, allegedly to Newark and Bayonne, concerning which no details are supplied.

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The Parties' Arguments

The Union argues that the only testimony concerning past practice was presented by its witnesses and was not challenged by the Company; that the evidence shows that each time an occasion arose for the performance of Checker's and Inspector's work outside the plant, the Company assigned bargaining unit employees to do it; that accordingly, the Union has met the Board's test for the establishment of the existence of a past practice.

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The Union contends further that the Company treated the order involved as a domestic shipment because a sister division was the customer, on which it relied to mark up the shipment; that however, an export order was involved and the Union challenged the Company's action of releasing the shipment without any markings; that nevertheless, supervision elected not to have the products stenciled at the plant; that accordingly, the Company violated Section 13, which establishes an employee's seniority rights to the work included in his job, and both Sections 2-A and 2-B.

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The Company argues that the Union has the burden of proof in establishing the existence of a protected past practice, as the Board has held, and has failed to do so; that the work done by bargaining unit employees at the Trenton Marine Terminal was in a storage area rented by the Company for the Trenton Works; that Fairless Works included a storage area for the Trenton Works; that Colport was no more than a railroad junction for the Trenton Works; that Sabo went to the two customer plants because the accuracy of his work was involved; that thus all the Union has shown is that in the past employees have been used outside the plant under certain circumstances.

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Furthermore, the Company contends, the situation here never occurred before. As Foreman Most testified, it is not unusual for export shipments to be released without markings, the customer subsequently

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adding the markings. In the instant case, however, the customer could not handle the stenciling and Trenton personnel had to be sent to do it.

The Company also refers to Section 2-A-3, Marginal Paragraph 8.2, which reads in part:

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"Any supervisor at a plant shall not perform work on a job normally performed by an employee in the bargaining unit at such plant..." (Company emphasis)

And it points out that Board Chairman Garrett stated in USS-5596-S that:

"The true purpose of Section 2-A-3 is apparent in its first sentence, revealing that it is broadly intended to bar performance of work 'at a plant' by 'any member of Management' when such work is 'on the job normally performed by an employee in the bargaining unit at such plant.'" (Original emphasis)

Accordingly, the Company argues, the prohibitions of Section 2-A are not applicable here, since the work was not done "at such plant."

Finally, the Company argues that the supervisors involved performed the work in 1-1/2 hours and spent approximately three hours in travel time; that had a bargaining unit employee done the work, he would have spent no more than his normal shift in accomplishing the task; that therefore, no loss of earnings was incurred as a direct consequence of supervision's performance of the work.

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FINDINGS

In claiming the existence of a past practice of out-of-plant assignments of Checkers and/or Inspectors to perform the work they normally do in the plant, the Union sees the recurring situation as the need for the performance of Checker's and Inspector's work outside

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the plant. It gives no consideration to the fact that the circumstances in which the out-of-plant assignments were made were not the same on all occasions. In two instances, for example, bargaining unit employees worked in areas being used as additional storage areas, in effect, extensions of the plant. On two other occasions the accuracy of the work of the Checker appears to be involved because of customers' claims of a shortage of material shipped. Therefore, the cited instances of past application may not be held to establish the claimed past practice.

More to the point, however, the posing of the dispute as a 2-B-3 question does not adequately define the issue here. For while the Company claims as a defense that Section 2-A-3 does not apply to bargaining unit work performed outside the plant, it does not contend that it has the right to release shipments without the markings called for in the order or shipping instructions, the work to be done outside the plant by customers, supervisors or anyone else. Hence, it would be the exceptional situation in which the disputed work would be done outside the plant. Thus the Third Step minutes read in part:

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"Management conceded that in the normal shipping function that before material is released for shipment the Inspectors and Checkers mark and inspect the material to be released. The involvement we are concerned with here is not the normal situation. The order and shipping papers did not indicate a requirement for marking prior to shipment. Only after the material was released was it found that a mark was necessary. Then it was decided that Supervision would go out and mark the material."

According to Foreman Most's testimony, the marking that was found necessary after the shipment was released was the designation identification; he and Foreman Willie marked this information on the reels and boxes inasmuch as the Baltimore Warehouse did not have sufficient personnel or stencil-cutting facilities to handle the work; and the other information called for by standard practice for export shipments would be marked on the material by the customer, American Bridge Division. This testimony explains why the shipment was released

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without being marked with the designation identification; but it does not explain why the information admittedly available on the shipping papers was not marked on the shipment at the plant rather than left for the customer to do. Therefore, the Company does not establish that the shipment was released without any markings because of a non-normal or unusual situation.

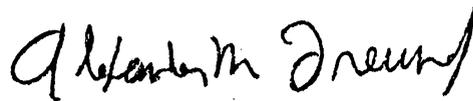
Thus it makes no difference whether the two supervisors stenciled all the shipping information on the shipment at Baltimore, as the Union appears to believe, or only the designation identification. The point is that there was no apparent reason for the release of the shipment without any markings over the Union's objection, thereby depriving the grievants of work the Company recognizes they are entitled to perform in the normal shipping situation. That work then was performed later by Foremen, instead of bargaining unit personnel, and it is clear that bargaining unit employees were available to perform the work as they had done in the past. Solely on these highly unusual facts thus established by the evidence in this case, the grievance will be sustained.

AWARD

The grievance is sustained. The Company shall pay Joseph Sikucinski and Alex Sabo eight hours' pay each at straight time.

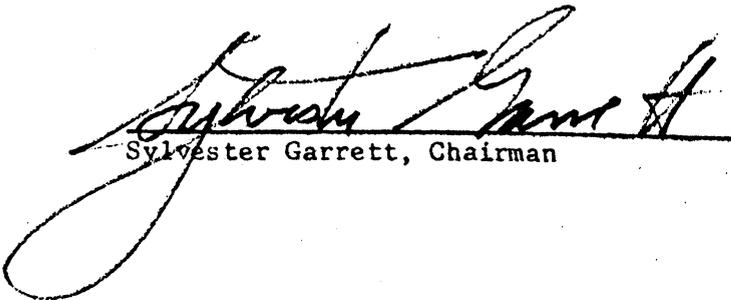
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Findings and Award recommended by



Alexander M. Freund, Arbitrator

This is a decision of the Board of Arbitration, recommended in accordance with Section 7-J of the Agreement.



Sylvester Garrett, Chairman