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United States Steel Corporation Fairless Works and United Steelworkers of America Local Union 5092

Sylvester Garrett
Chairman

Alexander M. Freund
Arbitrator

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BOARD OF ARBITRATION

Case No. USS-7630-S

February 19, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Fairless Works

and

Grievance Nos. SFL-69S-72; -74

UNITED STEELWORKERS OF AMERICA
Local Union No. 5092

Subject: Claim of Local Working Condition Controlling Crew Size

Statement of the Grievance: Grievance No. SFL-69S-72

"We the undersigned, claim that the Company is depriving us of our Contractural rights under the Basic Labor Agreement.

"Facts: That one (1) spares attendant is required to work alone on 2nd Turn Sat. 8-16-69 - This is a complete disregard of the agreement between the Company and the Union in regards to the numbers of spares attendans required to operate the spares system and on the basis the present schedule was negotiated in October 1966. 5 men 2nd turn monday thru Friday - 2 men 3rd turn Sunday thru Saturday 2 men 2nd turn Sunday & Saturday

"Remedy Requested: To work the men as they have been scheduled on all turns since October 1966. Make whole for all monies lost."

Grievance No. SFL-69S-74

"WE THE UNDERSIGN CLAIM THE COMPANY IS DEPRIVING US OF OUR CONTRACTUAL RIGHTS OF THE BASIC LABOR AGREEMENT OF 1968. SEC.: 14 & 2B3

"Facts: THE COMPANY IS REQUIRING SPARES ATTENDANTS TO EXTEND THEMSELVES BEYOND THE INHERENT SAFETY PROVISIONS OF THE JOB, BECAUSE OF THE REDUCED CREW SIZE.

"Remedy Requested: THE COMPANY TO STOP THIS PRACTICE BEFORE A SERIOUS INJURY DEVELOPES TO EMPLOYEES. MAKE WHOLE FOR ALL MONIES LOST."

Contract Provisions Involved: Sections 2-B-3 and 14 of the August 1, 1968 Salaried Employees Agreement.

Grievance Data:

	<u>Date</u>	
	<u>SFL-69S-72</u>	<u>SFL-69S-74</u>
Grievance Filed in Step 2:	8-20-69	9- 8-69
Appealed to Step 3:	9-18-69	9-18-69
Step 3 Meeting:	9-23-69	9-23-69
Appealed to Step 4:	10-16-69	10-16-69
Step 4 Meeting:	10-29-69	10-29-69
Appealed to Arbitration:	2-12-70	2-12-70
Case Heard:	9-10-70	9-10-70
Transcript Received	No transcript	No transcript

Statement of Award

The grievances are denied.

BACKGROUND

USS-7630-S

1
These two grievances from the Central Maintenance Department filed on behalf of the Maintenance Spares Attendants, claim that the Company violated Sections 2-B-3 and 14 of the Salaried Employees Agreement in requiring Spares Attendants to work alone by failing to call out or hold over a Spares Attendant to replace one who was absent. In both grievances the Company did not replace Spares Attendants absent on turns on which two were scheduled so that one worked alone.

2
The local working condition the Union alleges exists is a crew size practice that requires that (1) two Spares Attendants be scheduled on the third turn on Sunday through Saturday, two on the second turn Saturday and Sunday, and a minimum of five on the second turn Monday through Friday; and (2) in the event a scheduled employee is absent, he must be replaced by holding over or calling out a Spares Attendant to replace him.

3
The Company's position is that the claimed crew size practice does not exist; that workload rather than crew size determines whether or not a temporary vacancy is filled; and that the requirement that a Spares Attendant work alone does not, per se, create a condition which is unsafe beyond the normal hazards inherent in the job.

4
Maintenance Spares Attendants receive, unload, stock and disburse spares and other materials and maintain the records required by their work. Covering six storage locations on the day and afternoon turns, they have been scheduled as follows since April 23, 1967, the effective date of a scheduling agreement negotiated by the parties: 5 to 8 Spares Attendants on the second turn, Monday through Friday; two on the second turn, Saturday and Sunday; and two on the third turn every day of the week.

5
Previously, Spares Attendants had worked a schedule used in the P & M bargaining unit. They requested, and received, a schedule established in accordance with the Salaried Employees Agreement. However, it froze some of the employees on third turn and weekend work, and the parties negotiated the April 23, 1967 scheduling agreement, under which Spares Attendants rotate on a weekly basis.

According to the testimony of Grievance Committeeman Thomas Maietta, during the negotiation of the scheduling agreement Grievance Committee Chairman John Foley stated that the agreed upon schedule in effect establishes a crew size. The Company representative, Whilmer Shinn, said no, he was not establishing a crew size but this was the schedule he needed to meet his manning requirements.

Maietta testified further that since the agreed upon schedule has been in effect the Company has replaced all Spares Attendants absent because of illness, personal business, vacations, etc. by either holding over or calling out a man; that the first time the Company failed to call out a man to fill out a crew, on the third turn of August 1, 1967, the Union filed a grievance, which was settled; and that ever since then there were no deviations from the crew size practice until the instances which occasioned the subject grievances.

The Third Step minutes of the grievance the Union refers to, No. SFL-67S-32, reads in part as follows:

"d. UNION POSITION

"...Spare Attendant Ralph Stubbs...was compelled to work alone. This is a direct reversal of the Company preaching and teaching in regard to coverage and safety set forth in the Spares Program. Request the Company carry out its obligation to the Union with reference to Section 2-B-3 and 14 of the Basic Labor Agreement.

"e. COMPANY POSITION

"Management denies violation of the Basic Agreement. Supervision has instructed Spares Attendants on safe procedure when working alone and Spares Attendants can perform their job safely by adhering to these instructions.

"f. SUMMARY OF DISCUSSION

"After full discussion at the 2nd Step level, this grievance was again returned to 3rd Step for further discussions.

"Management advised the Union that the grievance asked for a cease and desist on the part of Management in the scheduling of Spares Attendants on the back turns, namely, the third turn. The grievance also alleges violation of Sections 2, 3, and 14 of the Basic Labor Agreement.

"On the basis of the Union's cease and desist request, at the present level of operations Management will return to the abnormal schedule as negotiated between the parties.

"g. DECISION

"Request is granted."

Maietta testified concerning two other grievances, in one of which, No. SFL-68S-66, filed in September 1968, the Union protested the unusually large amount of overtime work required of Spares Attendants, as much as 100 hours per week. The unusually large volume of overtime resulted from three permanent vacancies in the Spares Attendant job, two of which the Company had filled as of the date of the Step 3 meeting. According to the minutes of this meeting, the Union contended that a crew size agreement requires that the remaining vacancy be filled. The Company answered that the overtime requirements would be reduced but denied the existence of a crew size agreement. Maietta testified that subsequently the vacancy was posted and the overtime work reduced; therefore, the grievance was not appealed to Step 4.

In the other grievance Maietta refers to, No. SFL-69S-7, the Company did not replace two Spares Attendants who reported off sick on January 1, 1969. The grievance was denied and subsequently withdrawn by the Union. Maietta explains that since the day involved was a holiday, which should be a day of rest according to the contract, the grievance was dropped. 10

There is also testimony from Committeeman Maietta to the effect that the amount of material included in the spares control program has substantially increased since 1967, and that manning requirements remain constant throughout the year so that all vacancies have to be filled to maintain crew size. He refers to Case USS-7044-S, in which the Company is reported as arguing as follows in support of a rule that only one Spares Attendant may be on vacation in any one week throughout the year: 11

"Management says that the Spares Attendant is in a niche of its own, not closely related to other jobs, and thus temporary vacancies uniformly have been filled by overtime by other incumbents of this job and not by upgrading employees from other jobs. In fact, this job is covered throughout the year by substantial volumes of overtime, even without consideration of absences resulting from vacations. The Company says that the workload is pretty consistent over the whole year."

With respect to workload, Maietta states further that the six storage areas to which Spares Attendants are assigned are widespread, Warehouse No. 2, for example, being two miles from Center Bay; and that the two Spares Attendants scheduled on the third turn and on the Saturday and Sunday second turns must cover all the areas. 12

Concerning safety, Maietta made the following comments: that the men have been instructed to work in twos on the third turn and on weekends for safety reasons; that there are various hazards entailed in performing the Spares Attendant job such as in handling 13

heavy pieces and moving them between areas, using fork trucks and lifts to remove parts and in pulling material from racks by overhead cranes; that there have been 13 to 14 accidents since 1966 and many near accidents. The Union adds that its point with respect to safety is that when the men work together, one can get help for the other in case of an accident.

The Company's testimony, by General Supervisor Shinn, who heads up Maintenance Planning and Spares Control, is that the April 23, 1967 scheduling agreement was not intended to establish a crew size. He explains that the frozen schedule which was previously in effect would have worked insofar as providing the necessary coverage of the storage areas. But the men were unhappy about working steady evening or weekend work; and the matter under discussion in the negotiations was how to schedule and rotate the Spares Attendants so as to get the necessary coverage.

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The Company also refers to the following language included in the April 23, 1967 scheduling agreement to establish that it made no crew size agreement:

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"It is mutually agreed that the above schedule may be used by Management in scheduling Spares Attendants. It is understood Management has not agreed to use this schedule at any particular time, or any particular period of time, or in lieu of other schedules permissible under the Basic Labor Agreement. This schedule is merely available when Management requires it."

Shinn testified further under direct and cross-examination to the following effect concerning the filling of vacancies. Spares Attendants have been scheduled in accordance with the agreed upon rotating schedule since it became effective, and men have been called out or held over to fill vacancies only because the workload required it. The value of the parts included under the Spares Control Program has increased sixfold between 1964 and 1970; and within the last several months two men have been added to the Spares Program. Only once since the date of the scheduling agreement has a vacancy not been

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filled without being grieved, the day turn on January 2, 1967, on which day an additional employee worked the third turn; and all vacancies since the two instant grievances were filed have been filled. While no vacancies on the third turn have remained unfilled without being grieved, there have been a number of occasions on this turn where a Spares Attendant has worked alone for part of the turn because the other scheduled employee was late, left early due to illness or took time off for personal or Union business.

Shinn cites 28 such instances on the third turn between August 1967 and August 1968. The time involved was usually a half-hour to an hour and one-half and on a few occasions from two to five hours. In some cases Spares Attendants have been held over a half hour or hour to cover for a man who is late or on Union business.

With respect to the settlement in Grievance No. SFL-67S-32, Shinn testified that it was an agreement that the Company would go back to filling vacancies at a certain level of operations; that is, the filling of vacancies is tied to workload. Concerning safety, Shinn stated that the Spares Control Department has a good safety record; that none of the 13 to 14 accidents which have occurred since 1966 involved a loss of time; and that the men were working in pairs "in a broad sense" when the accidents occurred.

The Company also refers to the following instructions on working safely when alone which it says it has issued the men:

- "1. Keep the Machine Shop Foreman advised whenever moving from one location to another.
- "2. Never go to Warehouse #2, Warehouse #3 or the Oil House for a spare alone, but take the operating person who requires the spare with you.
- "3. When lifts are to be made, Machine Shop Foreman will determine whether it is safe or not for one Spares Attendant to make the lift.

- "4. Perform jobs, such as identifying spares and parts, paper work and keeping the office cleaned up when working alone."

Finally, Shinn described the patterns of work of the Spares Attendants, testifying that they work independently of each other most of the time even when two men are assigned to the same building, as, for example, in the Center Bay, which is 500 feet long and the men work at opposite ends of the building. There are also occasions when it is more efficient for Spares Attendants to work together, and they have been instructed to do so. Thus in the Center Bay, where overhead cranes travel the length of the building, it is more efficient for one Spares Attendant to hook up at one end of the building and for the other to unhook at the other end to eliminate walking the length of the building.

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FINDINGS

The April 23, 1967 scheduling agreement is not a local agreement to establish crew size in the manning of the spares control program, as is immediately apparent from the origin of the agreement, from Maietta's testimony concerning General Supervisor Shinn's response to Grievance Committee Chairman Foley's statement in the negotiations, and, of course, from the very language of the agreement. Therefore, Management's consistent filling of vacancies caused by absenteeism may not be attributed to the existence of a local agreement.

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Nor does it arise out of considerations of safety or the need for crew effort as such. In the receiving, stocking and disbursing of spares, and the maintenance of the records connected with these activities, there is work that Spares Attendants can perform alone and safely. The Union has recognized this in the past, as reflected in the fact that it has made no issue on the occasions that Spares Attendants have worked alone on the third turn when the other scheduled man was away part of the turn on personal or Union business. Further, the rules the men have been

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instructed to observe when working alone appear to cover the safety concerns the Union expressed at the hearing.

It is rather in the steadily increasing volume of parts that have been brought under the spares control program--a sixfold increase in the value of parts between 1964 and 1970--that the underlying basis for the manning requirements of the spares control program is found. The workload entailed in the expanding program has apparently made necessary a minimum of two Spares Attendants on the third and weekend turns and of five on the weekday second turns so that temporary vacancies must be filled in order to have the six spares storage locations adequately covered. Only on very few occasions has Management determined that replacements were unnecessary and not filled vacancies.

Therefore, under the circumstances that have thus far obtained in the spares program Management has not had, except on infrequent occasions, a reasonable course of action available to it in handling temporary vacancies other than to fill them. Indeed, when Management in effect changed the manning in the spares program in 1968 by not filling the third of three permanent vacancies pending in the Spares Attendant job (the matter in dispute in Grievance No. SFL-68S-66), the overtime work generated was admittedly excessive and the remaining opening was subsequently filled.

The settlement in Grievance No. SFL-67S-32, to which the Union refers, confirms the finding that the filling of temporary vacancies is tied to workload. That dispute, occasioned by the first unfilled temporary vacancy after the April 23, 1967 scheduled agreement was negotiated, less than four months earlier, was disposed of on the basis of a settlement which related the filling of temporary vacancies on the third turn to the level of operations.

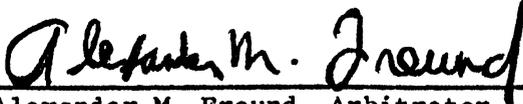
Accordingly, a Section 2-B-3 crew size practice has not arisen in the circumstances of this case. The fact that temporary vacancies in the Spares Attendant job have been consistently filled reflects, instead, Management's decision that such a course of action is warranted in the light of existing circumstances. Therefore,

when within the high level of operations in the spares program there occurs a temporary vacancy which Management may determine need not be filled in view of the workload at that time, Section 2-B-3 or Section 14 does not bar such a decision.

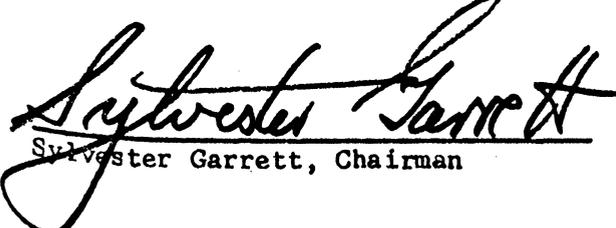
AWARD

The grievances are denied.

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