3-15-1971

United States Steel Corporation Sheet and Tin Operations Geneva Works and United Steelworkers of America Local Union 2701

Sylvester Garrett
Chairman

Alfred C. Dybeck
Assistant to the Chairman

BOARD OF ARBITRATION

Case USS-7821-S

March 15, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Geneva Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Grievance Nos.
SGe-69-80
-69-81
-69-82

Subject: Incentive Administration

Statement of the Grievances:

SGe-69-80

"We feel that the Company is in violation of Section 9-C by not making a proper intrim allowance for #90 furnace. The three month pay average was 163% with the intrim being 152%.

"We request the difference in pay be payed retroactively to the start of the intrim period 7-13-69."

SGe-69-81

"We feel that the Company is in violation of Section 9-C by not making a proper intrim allowance for #91 furnace. The three month pay average was 158% with the intrim being 152%.

"We request the difference in pay be payed retroactively to the start of the intrim period 7-13-69."

SGe-69-82

"We feel that the Company is in violation of Section 9-C by not making a proper intrim allowance for #99 furnace. The three month pay average was 159% with the intrim being 152%.

"We request the difference in pay be payed retroactively to the start of the intrim period 7-13-69."

Contract Provision Involved: Section 9-C-2-c of the August 1, 1968 Agreement.

Grievance Data:

	Date		
	SGe-69-80	SGe-69-81	SGe-69-82
Grievance Filed:	8- 1-69	8- 1-69	8- 1-69
Step 2 Meeting:	N/A	N/A	N/A
Appealed to Step 3:	8-21-69	8-21-69	8-21-69
Step 3 Meetings:	8-27-69	8-27-69	8-27-69
	12-31-69	12-31-69	12-31-69
Appealed to Step 4:	1-16-70	1-16-70	1-16-70
Step 4 Meeting:	3-20-70	3-20-70	3-20-70
Appealed to Arbitration:	5-18-70	5-18-70	5-18-70
Case Heard:	10-26-70	10-26-70	10-26-70
Transcript Received:	12-11-70	12-11-70	12-11-70

Statement of the Award: The grievances are returned to the parties at the Fourth Step for further discussion consistent with the Findings herein.

In these three grievances, filed by the First and Second Helpers assigned to Open Hearth Furnaces 90, 91 and 99 at Geneva Works, the Union protests the manner in which the Company established an interim allowance under Section 9-C-2-c of the August 1, 1968 Agreement. 1

The First and Second Helper crews are afforded incentive earnings based on Incentive Application Numbers 3160 and 3160.1. Application No. 3160 contains the equipment time values that at the time of cancellation were the same for all ten furnaces. Application No. 3160.1 contains the work time values and these were also the same for all ten furnaces. Although the earnings of each of these furnace crews are thus based on identical standards, the performance and incentive earnings for each crew are calculated and paid on a pay-period basis for each individual furnace. Thus the incentive earnings of each crew can be and, indeed, have been different. 2

In 1967 money was appropriated for an open hearth oxygen lance operation at Geneva Works. This appropriation included the installation of a bulk oxygen plant to be owned and operated by National Cylinder Gas Corporation to supply oxygen to operate the standard oxygen practice. The conversion of all open hearth furnaces began on July 15, 1969 and some 17 open hearth incentives were cancelled effective 11:59 p.m., July 12, 1969. At the time an interim period was established, commencing July 13, 1969, pending the installation of replacement incentives. 3

No issue is presented here concerning the cancellation of the incentive. Rather, the Union protests the amount of the interim allowance provided the First and Second Helpers on certain of the ten furnaces in the Shop. 4

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For the three-month period prior to the cancellation of the furnace crew incentive applications the average earnings for each individual furnace were as follows:

Furnace No.	Average IPP
90	163%
91	158
92	143
93	151
94	140
95	152
96	150
97	144
98	152
99	159
Shop Average	152%

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In establishing the interim allowance the Company used the Shop average of 152 percent for all of the First and Second Helpers regardless of the actual earnings each crew had attained during the three-month interim period. These grievances, filed by the First and Second Helpers assigned at the time to the three furnaces that had generated earnings higher than the Shop average, urge that the interim allowance be based on the actual average earnings of each furnace.

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Because of the practice of paying the First and Second Helpers the earnings of each furnace, the Union contends that each crew should receive an interim allowance based on the average earnings of the individual furnaces to which grievants were assigned. It is noted that, when the last

replacement of the incentive was made after the "ten furnace round out program" commencing in 1955, the crews were assured by a special agreement of a minimum earnings figure but were able to enjoy the actual earnings of each furnace to the extent they were above that minimum amount. In applying the language of Section 9-C-2-c-(a) (Marginal Paragraph 118.2), the Union would hold that "all regularly assigned incumbents of the job," referred to in that provision, should be viewed as the jobs of First and Second Helper assigned to each furnace not all the incumbents of those two jobs assigned to all the furnaces.

8 The Company points out that the temporary allowance or minimum guarantee of earnings after the "round out" was made by the special agreement of the parties in the settlement of a number of grievances protesting the level of earnings and was applied for only a limited period of time after the replacement incentive was installed. It is noted that no such local agreement exists here and the issue will be determined by reference to the terms of Section 9-C-2-c. In this respect the Company asserts that only one job of First Helper and one job of Second Helper exists in the open hearth and these two jobs are applicable to all furnaces. It points out that there is only one job of Second Helper and one job of First Helper set forth in the line of progression for purposes of applying seniority and, although employees are assigned with some degree of permanence to each furnace, this assignment is not based on seniority and no rights exist for the more senior First or Second Helper to select the furnace to which he may desire to be assigned.

9 The Company also asserts that there is but one incentive that exists here with one set of standards that apply to all ten furnaces in the Shop. Under these circumstances the Company would hold that the establishment of an interim allowance based on the average earnings of the entire Shop

over the interim period is proper since it is the job with which the interim allowance is to be identified under Section 9-C-2-c and not the individual earnings of the various incumbents of that job.

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The Company also contends that the performance of individual furnaces may vary depending on the length of the campaign. Thus it is noted that although Furnace No. 91 happened to be six points above the Shop average for the three months prior to the cancellation herein, its average earnings for the three years of 1966, 1967 and 1968 averaged two points below the Shop average. Likewise it is noted that Furnaces 92 and 93, that were below the Shop average of 152 percent for the three-month period prior to the cancellation, averaged earnings one and two points respectively above the Shop average for the above noted three-year period. Thus the Company suggests that not only is the use of the Shop average contractually proper for establishing the interim allowance but it is also eminently fair and equitable in that it eliminates the "luck of the draw" depending on the variations in the individual furnace performance over which the individual crew may have little or no control.

FINDINGS

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The only prior case where the Board faced a somewhat similar problem to the present was USC-556 involving Open Hearth Furnaces at Homestead Works. There the Board noted that in determining what constituted an "incentive" for purposes of Section 9-C-2 it would proceed "on a case-by-case basis, taking into account all relevant facts in light of the reasonable intent of the Agreement."

It seems apparent that the "relevant facts" in a situation of this sort will vary from one Open Hearth facility to another in part because of the nature of the equipment, local seniority practices, customs and understandings, among other variables. But in any such situation it is most desirable that the parties locally develop sound accommodations since such matters ordinarily cannot be treated satisfactorily in a theoretical manner. 12

In the present instance the local parties appear to have failed to achieve agreement primarily because of two misconceptions which can be clarified here. Local Union officials seemingly have been under the impression that if the present grievances were sustained, the Company nonetheless could not recoup payments (in excess of their actual reference period levels) to First and Second Helpers on the furnaces where actual earnings were less than the average of 152% for the entire shop. There appear to be 5 of the 10 furnaces where the reference period level of earnings was below the 152% average; if the Union were sustained here all of these individuals were paid too much, in error. Thus there now should be no doubt that such payments, in error within the meaning of Section 9-H, would be subject to recoupment by the Company in accordance with the principles outlined in USS-6494-S and related cases. 13

Local Management representatives, moreover, also seemed to be under an erroneous impression that if the present grievances were sustained under Section 9-C-2-c, the consequence would be that any replacement incentive or incentives would have to contain separately engineered standards for each furnace in order to comply with Section 9-C-4. For reasons first enunciated in the second Opinion in USC-719, it is important that Section 9-C-4 be interpreted realistically 14

recognizing that its essential purpose is to preserve earnings opportunity when old incentives are replaced with new ones in accordance with Section 9-C-2-b. Section 9-C-4 does not establish a fixed dollars-and-cents target which always must be attained under a replacement incentive. Common experience reveals that earnings in an Open Hearth shop, including 8, 10 or 12 furnaces, may vary substantially from furnace to furnace because of intangible differences, not anticipated in construction nor likely to be duplicated when each furnace is rebuilt. Moreover, earnings commonly fluctuate on any single given furnace during the course of a furnace campaign between rebuilds. Thus, even if the present grievances were sustained, nothing in Section 9-C-4 would preclude the establishment of incentives for all 10 furnaces at Geneva based on the same engineering studies resulting in identical standards (as long as there are no significant design or mechanical differences among the furnaces). It must be remembered finally in this connection that in testing compliance with Section 9-C-4, the Board commonly utilizes earnings data under the replacement incentive for a substantial number of pay periods. In dealing with any such issue which might arise at Geneva, it would be essential, realistically, to look at the data for all furnaces as a group in determining the soundness of the new standards and not to attempt to deal with each furnace as if it were essential to have standards tailored solely to that specific furnace.

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With these two areas of misconception now clarified, it would seem that the parties themselves at the local level should be able to arrive at some practical agreement on the

issue of the interim rate to be paid the jobs in question. Therefore the grievances will be returned to the parties at the Fourth Step for further discussion. Should agreement not be attained and the Union still desires to press this case to a decision by the Board, the Union may reappeal the matter to the Board within ninety days of the date of this decision.

AWARD

The grievances are returned to the parties at the Fourth Step for further discussion consistent with the Findings herein. 16

Findings and Award recommended pursuant to Section 7-J of the Agreement, by

Alfred C. Dybeck
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman