

1-12-1971

## United States Steel Corporation Fairless Works and United Steelworkers of America Local Union 5030

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BOARD OF ARBITRATION

Case No. USS-7871-T

January 12, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
Fairless Works

and

Grievance No. TFL-70-6

UNITED STEELWORKERS OF AMERICA  
Local Union No. 5030

Subject: Incentive Administration - Adjustment, Preservation  
of Integrity

Statement of the Grievance: "The Union and aggrieved  
employees contend that conditions and operations  
have changed and we request a revision in order to  
uphold the Integrity of Incentive Application IS-  
300-901 (Skelp Indirect).

Facts: Same as above.

"Operations (actual hrs) by  
the direct producing units have increased beyond a  
one crew operation thereby causing a lower standard  
for indirect employees, consequently lower earnings.  
(2) Outside shipments has increased crew sizes from  
16 to 20 men thereby increasing actual hours by  
direct crews and lower standards and lower earnings  
for indirect crew.

"Remedy Requested: We request standards be revised immediately due to changed conditions and operating hours. (2) Employees be paid any and all losses in earnings."

Contract Provisions Involved:

Labor Agreement dated August 1, 1968. Sections 9 and 10 of the Basic

Grievance Data

Date

Grievance Filed:	October 6, 1969
Appealed to Step 3:	February 13, 1970
Step 3 Meeting:	February 25, 1970
Appealed to Step 4:	March 6, 1970
Step 4 Meeting:	March 18, 1970
Appealed to Arbitration:	June 8, 1970
Case Heard:	October 28, 1970
Transcript Received:	November 18, 1970

Statement of the Award:

The grievance is sustained.

BACKGROUND

USS-7871-T

The issue in this case is whether an adjustment should be made in the Incentive Application covering indirect employees in the Pipe Mill Division of Fairless Works due to a change which, according to the Union, was unanticipated when the incentive was originally installed. 1

Incentive Application No. IS-300-901 was installed in 1957. It is calculated on a three-pay-period rolling average, and applies to the Coiled Skelp Mill indirect crew. This crew maintains the identity and flow of slabs from storage to the Skelp Mill furnace, assists in unloading and stocking slabs in the Slab Yard, lights up the furnace, attends it during non-operating time, cuts scrap pipe, etc. 2

The Incentive Application involved is fed by two direct plans covering the Slab Yard Crane and the Coiled Skelp Mill. The former is not involved. The grievance concerns the applicable constant of "Standard Hours per Earned Standard Hour and Unmeasured Hour of the Skelp Mill Direct Crew." There are three possible figures which may be used, depending upon the number of actual hours per pay period of the direct crew, as shown in the following table: 3

<u>No. of Actual Hours of Direct Crew Per Pay Period</u>	<u>Indirect Standard Time Values</u>
0-1740	.236
1741-3210	.172
3211-5376	.149

When this incentive was installed, the direct crew on the Coiled Skelp Mill consisted of 16 men. Such a crew on a straight-time basis would work 1280 hours per pay period. In February, 1966, the crew was increased to 20 with the addition of one Coil Feeder and three Banders who were employed under certain conditions involving added gauging and packaging in connection with outside shipments. 4

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A 20-man crew at 80 hours per pay period would put in 1600 hours. Overtime for a 20-man direct crew could produce total hours above 1740. The factor of .172 was then applied to Direct Standard Hours and Unmeasured Hours, resulting in an appreciable diminution of earnings.

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However, this never occurred until the pay periods ending September 27, 1969, and October 11, 1969, when the actual direct hours were 1787.2 and 1784.8 respectively. Being just over the break point, this application of .172, as opposed to .236 if direct hours had been under 1741, necessarily lowered the earnings of the indirect crew. Their IMP for those pay periods at 101% and 98% were substantially below average, and it was still only 106 for the pay period ending October 25. The direct crew, meanwhile, was doing very well in these weeks, an indication to the Union that something was amiss.

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The IMP for the year prior to the institution of a 20-man direct crew in February, 1966, averaged 117% and for the succeeding years, through 1969, it was 118%. The average for 1969 alone was 119%. Aside from the three pay periods directly affected, September 27, October 11, and October 25, no other pay period in 1969 had an IMP below 110%.

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According to the Union, the three standards actually were intended to apply respectively to a one-crew, two-crew and three-crew direct operation, although they were expressed in hours. It was expected that one direct crew would work well below 1740 hours while two crews of 16 men would normally work at straight time in the neighborhood of 2560 hours. (Three-crew operations apparently have not occurred.) No one anticipated, the Union maintains, that a single crew, enlarged to 20 men working overtime, would exceed the 1740-hour limit and thereby bring into play the lower standard. The Local Union President testified that when installation of the incentive was originally discussed, it was described in terms of a one-crew operation being based upon the .236 standard and a two-crew operation being based upon the .172 standard.

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The Company initially poses the defense of timeliness. It contends that the change to a 20-man direct crew was made in February, 1966, and a crew of that kind was used frequently

thereafter. Consequently, if the change was alleged to affect the incentive, the grievance should have been filed at that time and not in October, 1969.

Thus the Company cites Section 9-C-5-d of the Basic Labor Agreement which provides:

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- d. In the event Management does not adjust an incentive, as provided in Section 9-C-2-a above, the employee or employees affected may, if filed promptly, process a grievance under the grievance and arbitration procedures of this Agreement requesting that an adjustment to the incentive be installed in accordance with the provisions of this Subsection. If the grievance is submitted to arbitration, the decision of the Board shall be effective as of the date when the grievance was filed. (Underlining added.)

Pursuant to the foregoing provision, the Union was obliged to grieve when the size of the direct crew was increased, the Company maintained, and it is now foreclosed from doing so by the lapse of time. The grievance was not "filed promptly," it was stated.

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The Union argues that the grievance is timely, since the complaint is not simply that the size of the crew has changed but that the larger crew, with overtime, was employed in excess of 1740 hours. That occurred in 1969 for the first time, it was said, and it was that which warranted a change in the incentive.

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When both events coincided the indirect employees were adversely affected for the first time, the Union said. The increased crew size, when the crew did not work overtime, could not be a cause for complaint in 1966, the Union noted; if it had grieved in 1966, it would have been unable to produce any evidence of adverse effect on earnings to justify

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the grievance. Therefore, it grieved in October, 1969, when the change made by the Company resulted in an adverse impact and the Union had a legitimate contractual basis for the grievance.

On the merits, the Company contends that the standard in question is based solely upon the hours worked by the direct crew, and the Company is obliged to do no more than is called for by the Incentive Application. No reference is made in it to the number of crews, the Company said. The Company states that it has observed the plan's requirements.

In its brief the Company argued that "it is a fundamental precept of industrial engineering recognized by the Board that all incentives fluctuate and that a reasonable period must be looked at in determining the necessity (or claimed necessity) of an adjustment." And in its summation at the hearing the Company said that "the whole concept of incentives involved the assumption that once in a while you hit high periods and once in a while you hit low periods."

The Company cited the Award of the Board in USS-6877-S which stated, in part:

The installation of an incentive application, with standard values for equipment and other conditions, does not serve either to guarantee a sustained level of earnings nor to insure a sustained level of operation of those conditions. Moreover, preservation of integrity, does not mean that the Company must, hour by hour and turn by turn, protect incentive rated employees from loss of earnings. Particularly where, as here, a condition failure occurs because of temporary inoperation of equipment, due to breakdown and similar or related causes, and where, as here, incentive earnings over a representative period are not materially affected, the integrity of the involved incentive application is not lost. We believe therefore that in such situations, as this, no 9-C-2-a "adjustment" is required.

FINDINGS

A grievance restricted to a four-year-old event could not under Section 9-C-5-d be considered timely. Consequently, if the accretion of four men to the direct crew as such constituted a grievable matter, the Union's failure to have filed "promptly" would bar it. However, the circumstances indicate that it was not grievable in 1966. So long as the direct crew worked less than 1741 hours, no adverse impact on indirect earnings, justifying any revision, could have been shown. The grievable change was produced by a combination of the increase in crew size and the overtime hours which occurred for the first time in September, 1969. Their impact on earnings is obvious. 17

Consequently, it must be held that the grievance was not filed untimely. The Union had no basis for complaint in 1966 as a result of the expanded direct crew since there could be no showing of any adverse effect on earnings. Similarly, overtime work by the original crew size could not have produced an adverse effect, since it is extremely unlikely that a 16-man crew would exceed 1740 hours in a pay period. But the combination of the two events, one in 1966 and the other in September and October, 1969, did result in the kind of change which justified the Union's filing a grievance at that time. 18

The IMP for 1969 pay periods, which portrays the problem, was as follows: 19

<u>Pay Period Ending</u>	<u>% I.M.P.</u>
1-4-69	126
1-18-69	125
2-1-69	124
2-15-69	124
3-1-69	124
3-15-69	125
3-29-69	126
4-12-69	127
4-26-69	127
5-10-69	126
5-24-69	125
6-7-69	124
6-21-69	122
7-5-69	117
7-19-69	113
8-2-69	110
8-16-69	111
8-30-69	115
9-13-69	112
9-27-69	101
10-11-69	98
10-25-69	106
11-8-69	124
11-22-69	123
12-6-69	122
12-13-69	121
12-27-69	120

The average IMP in 1969 preceding the pay period ending September 27 was 121, and in the five periods in 1969 after October 25 it was 121. Some of the low IMP's prior to September 27 were due to alternate weeks of one-crew and two-crew operations, which necessarily produced direct hours close to the 1741 mark. It caused the application of the .172 standard, although there were substantially fewer hours than when two crews are working; this was not a source of grievance but some unhappiness over it was expressed by the Union at the hearing.

The testimony of the Local Union President, James Costa, that when the Incentive Application was introduced the three constants were described as relating to one-crew, two-crew, and three-crew operations was unrefuted. Mr. Costa said that the parties never anticipated that one crew would be expanded and then given sufficient overtime work to bring it within the range of the .172 factor. It appears to be virtually impossible for a 16-man crew to exceed 1740 hours and, given the crew size that existed prior to 1966, this tends to substantiate the Union's testimony concerning the rationale behind the three constants.

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Award USS-6877-S is not in point here. For the instant grievance does not suggest that the Company is obliged to guarantee employees against every fluctuation in incentive earnings, a concept which led the Arbitrator in 6877 to deny that "the Company must, hour by hour and turn by turn protect incentive rated employees from loss of earnings." As noted, there have been marked adverse effects in the past from alternate one-crew and two-crew weeks, without grievance.

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It is not merely some variation in the normal flow of work, causing a reduction in earnings, which characterizes this grievance. Breakdowns, changes in speeds, differences in materials, and the like may result in fluctuation in earnings which are comprehended by the plan. But misapplication of the plan's underlying intent, by the use of a standard in a manner not originally devised, raises a different question. In that case rectification is warranted even for the single pay period when a standard is misused. Employees are entitled to consistently proper application of a standard. Consideration of long-range earnings is therefore not relevant in such a case, as it is when the problem is to detect the impact of some not-readily measurable change which exerts a drag on earnings.

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Thus the issue is whether the standard was applied in September and October, 1969, as it was conceived when the incentive was installed, and as it was explained to the Union at the time. It was not, despite apparent compliance by relating direct hours to the specified standard. When to the 20-man crew were added the overtime hours, a standard different from the one intended was invoked. It warrants an adjustment. If

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that were not so, the Company could regularly use a 20-man direct crew with overtime--or one still larger without it--for sufficient hours to exceed 1740 and thereby materially reduce the earnings of the indirect crew on a permanent basis. That, alone, demonstrates that the standards for the three groupings of direct hours were not aimed at the situation which has arisen.

A change of this kind in one pay period or in two, if permissible without adjustment for it, would become permissible if it occurs for four pay periods or for a dozen. What is at stake is the basic meaning of the standard in the Incentive Application, and not some transitory occurrences which, as USS-6877-S demonstrates, do not dictate "hour by hour and turn by turn" protection against loss of earnings.

Although the Company maintains that the Incentive Application is geared solely to the number of hours and not to the number of direct crews, it is plain that the use of one direct crew for hours exceeding 1740 was never intended. The infrequency of occurrence is not material in deciding such an issue, which concerns simply the method of applying the three standards.

A Company witness noted that the Union's position does not embrace a reverse possibility, namely that two-crew operations might work 1740 hours or less as a result of short work weeks. However, it appears that this has never occurred. It is much less likely that two 16-man crews would have actual hours under 1741 than would one 20-man crew exceed 1740. But if that did occur, the Company would have grounds for an adjustment corresponding to the adjustment that is found appropriate in this case.

Lines of demarcation, such as those set forth in the groupings of direct crew hours, may from time to time either benefit or adversely affect employees. However, the nature of the gradations here, the evidence about them, and their logic, demonstrate that the break points were really used as rough guides to differing numbers of crews as they then existed. It is not likely that the plan contemplated a huge drop in incentive earnings simply because a single larger crew on overtime slightly exceeded the 1740-hour point, and thus would require a standard almost 30% smaller.

The same kind of problem could have arisen if the standards in question had been geared to the number of crews. Then the factor of .236 would have appeared in the Incentive Application as proper for one crew, .172 for two crews and .149 for three. But if the Company later changed the 16-man direct crew into two 10-man crews, it would be equally improper to apply the .172 standard mechanically to such a basic change. For the incentive rests squarely upon an anticipation that at least within broad limits the standard would relate to the same basic patterns which were operative when it was installed.

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The Union does not ask for specific relief, such as the application of a particular numerical standard in the pay periods in question. Instead, it urges an "intermediate standard," when conditions not anticipated by the Incentive Application arise through the use of one 20-man direct crew working sufficient overtime to produce actual hours exceeding 1740. Since the parties did not intend the standards to operate as they were here applied, preservation of the integrity of the incentive justifies sustaining the grievance and the relief sought.

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#### AWARD

The grievance is sustained.

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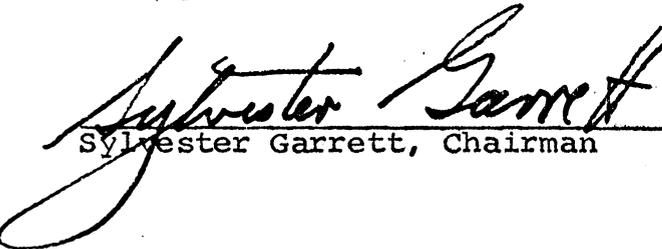
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USS-7871-T

Findings and Award recommended  
by

  
Milton Friedman, Arbitrator

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

  
Sylvester Garrett, Chairman