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United States Steel Corporation Eastern Steel Operations Clairton Works and United Steelworkers of America Local Union 1557

Sylvester Garrett
Chairman

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BOARD OF ARBITRATION

Case USS-8101-H

March 29, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Clairton Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1557

Grievance Nos.
HC-70-12; -13

Subject: Change in Posted Schedule; Seniority;
Practice as to Performance of Overtime.

Statement of the Grievances: Grievance HC-70-12:

"Management unjustly assigned
men of Unit #60 to the Marine Ways.

"On January 20, 1970 Millwrights
of Unit #60 were assigned to the Marine Ways.

"Management cease this practice
and pay all monies lost by this unjust act."

Grievance HC-70-13:

"Management unjustly assigned men of Unit #51 to the Marine Ways.

"On January 20 & 21, 1970 Welders of Unit #51 were assigned to the Marine Ways.

"Management cease this practice and pay all monies lost by this unjust act."

Contract Provisions Involved: Sections 2-B-3, 10-D-3, and 13-B of the August 1, 1968 Agreement.

Grievance Data:Date

Grievances filed:	January 27, 1970
Step 2 Meeting	February 19, 1970
Appealed to Step 3:	February 27, 1970
Step 3 Meeting:	March 3, 1970
Appealed to Step 4:	May 12, 1970
Step 4 Meeting:	July 17, 1970
Appealed to arbitration:	October 16, 1970
Case heard:	December 11, 1970
Transcript received:	January 26, 1971

3.

USS-8101-H

Statement of Award:

Grievance HC-70-12 is denied.
Grievance HC-70-13 is sustained only to the extent that those grievants whose schedules were changed by deletion of the day turn, and whose jobs on day turn in effect were filled by Unit No. 51 Welders, shall be made whole as if they in fact had worked as originally scheduled on the day turn.

These grievances from Clairton Works Seniority Unit No. 46 - Marine Ways, protest that Welders and Millwrights from other seniority units were brought to the Marine Ways on January 20 and 21, 1970, to perform work traditionally performed only by Unit No. 46 personnel. Grievants include Welders and Boilermakers, a Boilermaker Apprentice, and a Boilermaker Helper.

1

In January of 1970 there was greater need than usual for repair to the Clairton Works barge fleet, in part because of ice conditions in the river. Beginning January 12, the Unit No. 46 Barge Repair crews, including grievants, worked the day turn every day. This included Saturday, January 17, and Sunday, January 18. By the morning of January 19, moreover, it appeared to Marine Ways supervision that the Unit No. 46 repair crews still would not be able to keep up with the volume of work required, without more overtime, since there still were about 30 barges awaiting repair. As a result, Assistant Superintendent (River Transportation and Marine Ways) Herald sought permission from the General Superintendent's office to work the men more overtime. In reply, he was advised that qualified employees from other seniority units would be made available to augment the regular Barge Repair crews in handling the accumulated work. Herald then advised Grievance Committeeman Juliot that next day two crews would be scheduled, using employees from other units in each crew, explaining that he did not want to use Unit No. 46 men for excessive overtime. Juliot strongly objected to this change in the posted schedule, and stressed that Unit 46 personnel always before had handled peak work loads without aid from personnel in other seniority units.

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Next day six Millwrights from the Coke Plant and three Welders from Central Shops were used on the afternoon (4 to 12) turn with some regular Barge Repair crew members who

3

had been rescheduled from the day turn. And on the day turn, six Welders from the Central Maintenance Welding crew were used to work with those members of the regular day turn repair crew who had not been rescheduled for the afternoon turn. The following day six Welders from Unit No. 51 again worked day turn at Marine Ways and seven members of the regular Barge Repair crew worked 12 hours that day.

At this point, however, local Management apparently concluded that the regular Barge Repair crews could handle the workload by working 12 hours a day; Unit No. 46 employees than worked 12 hours per day for the balance of the week and continued to work on this basis until the week beginning February 8, 1970.

Grievance HC-70-12 protests the use of Unit No. 60 (Coke Works) Millwrights on one of the two days in question, while Grievance HC-70-13 protests the use of Welders from Unit No. 51 on both days. Both grievances are signed by the same 12 individuals. During the week in issue, six of the grievants actually worked 72 hours, five worked 68 hours, and one worked 64 hours. None of the employees who were imported into Unit No. 46 that week worked more than 48 hours, in all, save one man who worked 52 hours because of a later call-out for a special assignment on January 22. Two of the imported employees worked only 32 hours during the week in issue, including the eight hours which each worked in Unit No. 46.

The Company presented the following table to establish that Unit No. 46 employees occasionally worked in other seniority units and vice versa:

Week of:

April 28, 1968

- L. Parsons, Check No. 22118, a Sign Painter; and R. VanFosson, Check No. 22142, a Painter, from Seniority Unit No. 46 - Marine Ways, worked four (4) days at Coke Works.
- H. Brown, Check No. 22109, and K. Walker, Check No. 22110, both Carpenters from Seniority Unit No. 46 - Marine Ways, worked five (5) days at Coke Works.

May 5, 1968

- H. Brown, Check No. 22109 - Carpenter
- R. Walker, Check No. 22110 - Carpenter
- L. Parsons, Check No. 22118 - Sign Painter
- R. VanFosson, Check No. 22142 - Painter from Seniority Unit No. 46 - Marine Ways worked five (5) days at Coke Works.

May 12, 1968

- L. Parsons, Check No. 22118 - Painter
- R. VanFosson, Check No. 22142 - Painter from Seniority Unit No. 46 - Marine Ways worked four (4) days at Coke Works.

August 18, 1968

- S. Brajercik, Check No. 42400 - Pipefitter
- L. Parsons, Check No. 22118 - Painter from Seniority Unit No. 46 - Marine Ways worked two (2) days at Keystone.

Week of:

August 25, 1968
to
October 13, 1968

L. Parsons, Check No. 22118 - Painter
- (8-25-68 to 9-14-68).
R. VanFosson, Check No. 22142 - Painter
(9-15-68 to 10-19-68).
S. Brajercik, Check No. 42400 - Pipefitter
from Seniority Unit No. 46 - Marine Ways
worked at Keystone.

October 20, 1968
to
November 10, 1968

S. Brajercik, Check No. 42400 - Pipefitter
- from Seniority Unit No. 46 - Marine Ways
worked at Keystone.

Effective August 22, 1966, the following ten (10) Seniority Unit No. 46 - Marine Ways Trade and Craft Apprentices were temporarily assigned to Seniority Units within the Shops Department:

<u>Name</u>	<u>Check No.</u>	<u>Job at Time of Assignment</u>	<u>Date Returned to Marine Ways</u>
J. Lupetin	12244	Machinist Appr. 2	11-07-66
F. Serdi	20422	Boilermaker Appr. 2	11-07-66
J. Carns	22145	Wireman Appr. 5	11-28-66
A. Long	30526	Boilermaker Appr. 2	10-17-66
A. Ewing, Jr.	20416	Boilermaker Appr. 2	11-07-66
*S. Chatlas, Jr.	20031	Welder Appr. 2	10-31-66
*W. Motter	20030	Welder Appr. 2	11-07-66
*T. Balog	20311	Welder Appr. 2	10-31-66
S. Brajercik	42400	Pipefitter Appr. 5	11-07-66
A. Ponick	22155	Pipefitter Appr. 4	11-07-66

* Grievants in USS-8101-H (HC-70-12; -13)

Effective August 29, 1966, the following three (3) additional Seniority Unit No. 46 - Marine Ways Trade and Craft Apprentices were temporarily assigned to the Seniority Units within Shops Department:

<u>Name</u>	<u>Check No.</u>	<u>Job at Time of Assignment</u>	<u>Date Returned to Marine Ways</u>
T. O'Brien	22100	Electronic Repairman Appr. 5	11-28-66
L. Masar	11409	Boilermaker Appr. 5	*10-31-66
C. Downey	22157	Welder Appr. 5	*10-31-66

* Returned to Marine Ways for week of 9-19-66 only.

Effective June 12, 1967, Thomas J. O'Brien, Check No. 22100, an Electronic Repairman Apprentice 7, from Seniority Unit No. 46 - Marine Ways was permanently transferred to Seniority Unit No. 56 - Wiremen and Electronic Repairmen Crew in the Shops Department. (See HC-67-83)

From June 29, 1964 to July 19, 1965, William J. Scardanello, Check No. 71065, and John T. Howze, Jr., Check No. 11528, both Welder Apprentice 3 from Seniority Unit No. 51 - Welding Crew in the Shops Department were temporarily assigned to Seniority Unit No. 46 - Marine Ways. (Both Scardanello and Howze were assigned to Marine Ways in the subject case.)

James McMahan, Check No. 81668, worked in Seniority Unit 46 - Marine Ways from December 18, 1945, to September 24, 1948, at which time he was permanently transferred to Seniority Unit No. 51 - Welding Crew in the Shops Department. (McMahan was assigned to Marine Ways in the subject case.)

Carpenters and Painters from Seniority Units 53 and 54 respectively in the Shops Department performed work at Marine Ways during April, 1967.

The Union now stresses that over the years prior to January of 1970 no Welders or Millwrights ever before had been imported to perform barge repair at the Clairton Marine Ways. Since the Company relies upon an extreme ice condition on the river to portray the present situation as an "emergency," the Union stresses that frequently there are at least 30 barges awaiting repair, not only in the winter but also in the summer. The Union feels that such "pile-ups" occur because of Management's inability to stabilize the workload and to schedule work more efficiently. Much emphasis is placed by the Union on the argument that the posted work schedules of many of the grievants were changed in violation of Section 10-D-3, and that employees from other seniority units supplanted these grievants on their scheduled shift, in violation of their seniority rights. And finally, the Union believes that a long established local working condition bars employees in other Clairton Seniority Units from performing any work in Unit No. 46.

The Company stresses the ruling in Case CI-257 to the effect that the mere assignment of particular duties to employees on a given job does not give rise to a local working condition, under Section 2-B-3, which would require that such duties always be assigned to that job. The Company also cites Cases USC-523 and USS-6560-H, and quotes from the Opinion in Case USC-1159, where the Board found no violation of the seniority rights of employees in a given unit solely because

employees from another seniority unit shared work where the employees in the home seniority unit enjoyed a 40-hour week. The Company deems the cited Awards to establish conclusively that a mere assignment of extra work, in a given seniority unit, to employees from outside that particular seniority unit does not violate the Agreement where employees in the home unit are working 40 hours or more per week.

FINDINGS

There is no doubt that 30 or more barges may be awaiting repair at Clairton Marine Ways rather frequently. It also is clear that many factors contribute to wear and tear on the barges; ice conditions on the river are only one such factor. Low water in the summer months also is a seasonal cause for more than average barge repair.

9

In these circumstances the facts that (1) there was ice on the river and (2) about 30 barges were awaiting repair on January 19, 1970 cannot be deemed--without more--to have presented an unusually serious problem for Clairton Management at that time. Combined with these two facts, however, was a third factor which apparently did make the situation uniquely difficult: there was an unusually high level of demand for coal barges at that time. The testimony of Assistant Superintendent Herald is uncontradicted: during January of 1970 it was necessary to provide barges for loading at five mines along the river, plus the Glenwood Terminal, and there was no storage capacity for excess coal which might back up at any of these locations. Thus if barges were not ready for loading at the mines, according to Herald, mining would have been interrupted at a time when the mines were operating extra turns to meet a heavy demand for coal.

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Under this uncontradicted evidence the Board must conclude that on January 19 there was good reason for Clairton Management to believe that the total workload for the Barge Repair Crews might soon become excessive, if the need for enough barges, in good repair, was to be met. While it seems clear that Unit No. 46 employees had not been supplemented (by employees from other units) to perform barge repair work in the past, there is no local agreement to preclude such action, and it is not shown that past situations actually involved the same prospect of excessive overtime hours which local Management apparently, in good faith, believed would be necessary if the grievants were to try to handle all the repair work without supplementation.

12

There should be no doubt, in any event, that the Union claim of controlling local practice must be evaluated against the unusual facts shown in the present case. Among these facts are that (1) grievants already were working on a basis of more than 40 hours per week, (2) the demand for barges (coupled with the number already needing repair, and in light of river conditions) was likely to require an extremely large number of overtime hours per week if all repair work were performed only by Unit No. 46 personnel, and (3) it was impossible to know the duration of major factors which contributed to the problem.

13

Among earlier Board decisions which deal with interpretive problems somewhat similar to those presented here, perhaps the most pertinent is Case USC-1159. There the Board noted that a local agreement or clearly established practice may limit overtime assignments exclusively to employees within a given seniority unit. But where there is no clear local agreement to this effect, it is the Union's burden to present solid evidence to support a claimed local working condition of this sort. The mere fact that over a period of years overtime work normally has been shared only by employees in a given seniority unit does not in itself establish that such employees always will perform all of the same type of work under any and all future conditions.

In the present case there is no doubt that employees from other units worked in Unit No. 46 only rarely, while Unit No. 46 people more often performed work temporarily in other units. But there is no reason to believe that what happened over past years constituted, or reflected, a commitment under which Management thereafter was to be barred from using reasonable discretion and initiative in dealing with highly unusual conditions such as were produced by a combination of circumstances in early 1970. There is no showing that in any past period of equal duration the Barge Repair crews had worked overtime to the same extent as reasonably appeared necessary to Clairton Management on January 19, 1970. Under all of the available evidence, therefore, it appears that the Union here has failed to show a controlling local working condition, which would have barred any use of employees from other Units to supplement the Unit No. 46 employees, rather than working them excessive overtime, during the week here in dispute.

14

In its present form Grievance HC-70-12 deals only with temporary use of Millwrights to supplement Unit No. 46 personnel on the 4 p.m. to 12 shift on January 20, 1970. This grievance, under the specific facts in this record, cannot be sustained. It should be emphasized, of course, that this ruling deals only with the issues presented in this grievance at the time of the hearing, and passes no opinion upon different fact situations which may arise in the future.

15

Grievance HC-70-13 deals to some extent with a slightly different problem, since it includes a protest against the substitution of Unit No. 51 Welders for some Unit No. 46 employees on the day turn of January 20 and 21. Here it is important to note that the posted schedules of these Unit No. 46 employees

16

were changed, in violation of Section 10-D-3, when they were required to work the 4 p.m. to 12 shift instead of the day shift for which they had been scheduled. There was no emergency which required this schedule change; the problem could have been handled simply by having these employees work overtime, if they were needed on the afternoon shift, as seemingly was intended originally by Marine Ways supervision. 17

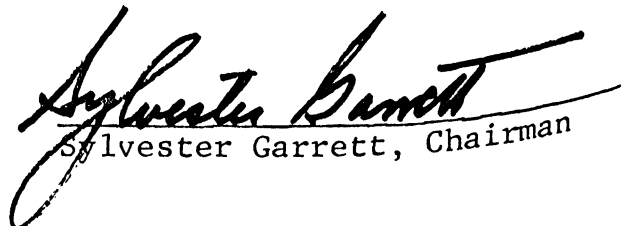
In determining appropriate remedial action for the demonstrated violation of Section 10-D-3, due weight must be given to the fact that employees from another seniority unit (No. 51) were substituted for some of the grievants on day turn, for which they originally were scheduled. In Case USC-962, where other employees also were substituted for grievants on turns which were improperly cancelled on their schedules, the grievants were made whole for lost earnings. (See also USC-1177, Marginal Paragraph 13.) A similar remedy was applied under somewhat similar circumstances in Case USS-5125-H, and there is no sound reason not to apply the same sort of remedy here.

AWARD

 18

Grievance HC-70-12 is denied. Grievance HC-70-13 is sustained only to the extent that those grievants whose schedules were changed by deletion of the day turn, and whose jobs on day turn in effect were filled by Unit No. 51 Welders, shall be made whole as if they in fact had worked as originally scheduled on the day turn.

BOARD OF ARBITRATION


Sylvester Garrett, Chairman