2-11-1971

United States Steel Corporation (Unknown Plant) and United Steelworkers of America (Unknown Local No.)

Sylvester Garrett
Chairman

Milton Friedman
Arbitrator

Contract Provisions Involved: Sections 3, 8 and 13 of the Salaried Agreement dated August 1, 1968.

Grievance Data:	Date
Grievance Filed:	September 29, 1970
Step 3 Meeting:	October 7, 1970
Appealed to Step 4:	October 23, 1970
Step 4 Meeting:	November 18, 1970
Appealed to Arbitration:	January 12, 1971
Case Heard:	February 3, 1971
Transcript Received:	February 11, 1971

Statement of the Award: The grievance is denied.

There is no factual dispute. What is involved is the meaning of Section 13-D. 1

The grievant started working for the Company on July 22, 1970, and his last day of work was September 11, 1970. He was thereupon discharged and the Company contended that his discharge was not reviewable for cause, since he was a probationary employee. He had worked the last three days of the payroll period ending July 25, 1970, seven days during the payroll period ending August 8, ten days during the period ending August 22, six days during the pay period ending September 5, and then the first three days of the following pay period. All in all, the grievant had worked a total of 29 days during three full pay periods, surrounded by the end of his first pay period and the beginning of his last one. 2

Section 13-D provides, in part, as follows: 3

> "New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first four biweekly pay periods of actual work and will receive no continuous service credit during such period. Probationary employees...may be laid off or discharged as exclusively determined by Management."

According to the Union, this language means that if an employee has worked <u>in</u> four pay periods, and then begins his fifth, the requirements of Section 13-D have been met and he has therefore completed his probationary period; consequently he may not be discharged except for proper cause. The Union describes the Agreement's reference to four biweekly pay periods in this way: "...a man must only perform work in each of the four bi-weekly pay periods. This man did work in four bi-weekly pay periods, and he did continue to work in the fifth bi-weekly pay period." The Union also notes that otherwise an employee 4

who was required to work four complete pay periods conceivably could be on probation over a considerable period of time, if he worked only a small part of each pay period.

Conversely the Company contends that the Union's interpretation would permit an employee to work merely a total of four hours in order to complete his probationary period, if he worked one hour in each of four pay periods. The Company relies on the explicit language of the Agreement, stressing its reference to "four biweekly pay periods of actual work."

The Company relates the Salaried Agreement to the Agreement covering production employees, which requires 260 hours of "actual work" and points out that there is no essential difference between the two provisions. It also cites the application forms which it has used over the years and which have indicated that employees must actually perform the requisite amount of work in order to pass their probationary period. Finally, the Company maintains that there have been at least two instances when employees were discharged without grievance during their fifth pay period of employment, after they had worked less than 40 days.

FINDINGS

What is dispositive in this case are the plain, unvarnished words of Section 13-D as well as their inherent logic. The Union's argument never directly addressed itself to the requirement that there be four biweekly pay periods of "actual" work." Instead, it interpreted the language as if it called for some actual performance of work within four pay periods. An employee hired on the last day of a pay period, under the Union's interpretation, would automatically complete his probationary period after he had performed any work in each of three pay periods thereafter. There is no way that such an interpretation can be eked out of the relevant language.

Seemingly explicit language used in one environment may contain an ambiguity requiring interpretation in another. However, nothing in this record provides reason to believe that the language should be viewed any differently than its everyday words signify. 8

Aside from the language, the purpose of a probationary period supports the Company's position. It is to afford an employer the opportunity to assess an individual and to be able to dismiss him without recourse if he is unsatisfactory. The passage of time alone does not serve this purpose. The employee must be on the job and performing his work so that his skills, his competence, his industriousness, his relationship with others, and the like, may be evaluated. 9

Since the grievant did not perform "four biweekly pay periods of actual work," the Company retained the exclusive right to discharge him without recourse. 10

AWARD

The grievance is denied. 11

Findings and Award recommended by

Milton Friedman

Milton Friedman, Arbitrator

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

Sylvester Garrett

Sylvester Garrett, Chairman