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United States Steel Corporation Heavy Products Operations Edgar Thomson Works and United Steelworkers of America Local Union 1219

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BOARD OF ARBITRATION

Case No. USS-5110-H

October 22, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Edgar Thomson Works

and

Grievance No. HET-64-101

UNITED STEELWORKERS OF AMERICA
Local Union No. 1219

Subject: Filling Extended Vacation Vacancies.

Statement of the Grievance: "The decision to move incumbents off turn to fill temporary vacancies caused by the granting of E. V.'s is an innovation contrary to past practice, and in direct conflict with the Local Seniority Agreement.

Facts: Grievants on turn denied the opportunity to advance to temporary positions.

Remedy Requested: All Temporary vacancy's be filled by employees on the turn the vacancy occurs on (2) Grievants be paid for all time lost."

This grievance was filed in the Second Step of the grievance procedure July 5, 1964.

Contract Provision Involved: Appendix V of the June 4, 1963 Local Seniority Agreement.

Statement of the Award: The grievance is denied.

BACKGROUND

Case No. USS-5110-H

This grievance from the Blast Furnace Department of Edgar Thompson Works claims that vacancies resulting from the incumbents' absences on Extended Vacations are temporary within the meaning of Appendix V of the June 4, 1963 Local Seniority Agreement, and thus should have been filled by moving grievants up on the furnace and turn where the vacancies occurred, rather than by assigning to those vacancies the two employees with longest Department service who previously had established incumbency status on the Keeper job, under Section F-1 of the Local Seniority Agreement. 1

In the Summer of 1964 two incumbent Keepers working at No. 6 Blast Furnace went on EV's, one starting June 28 and the other July 5, 1964. The latter's EV ended October 3, 1964. 2

Since the two absences on the Keeper job were of known duration and beyond 30 days, Management filled the two vacancies by assigning to them the two employees with most Blast Furnace Department service who previously had established incumbency status on the Keeper job. One of these then was working as Keeper Helper (First) at No. 1 Furnace and the other as a Department Knock-Out Keeper Helper (First). 3

The four grievants, then working as Keeper Helper (First), Keeper Helper (Second), and Cinder Snapper on No. 6 Furnace where the Keeper vacancies occurred, insist that vacancies resulting from EV's necessarily are temporary in nature and, therefore, that they must be filled by moving up the promotional sequence employees on the furnace where the vacancy exists, under the language of Appendix V of the June 4, 1963 Local Seniority Agreement, which reads as follows: 4

" TEMPORARY VACANCIES -
BLAST FURNACE DEPARTMENT

"Temporary vacancies, which arise on position jobs because the scheduled employee is off work will be filled by moving employees on the furnace up the promotional sequence. For example, if the Keeper on #2 Furnace does not

"report for work as scheduled, the Keeper Helper (First) on #2 Furnace will be upgraded to Keeper provided he has the ability and physical fitness to perform the job; the Keeper Helper (Second) on #2 Furnace will be upgraded to Keeper Helper (First) in the same manner, etc. In filling such vacancies, employees will not be moved from one furnace to another except when it is necessary for Management to make such moves because qualified employees are not available to move up in the regular manner.

"When permanent vacancies occur, they will be filled in the usual manner; that is, a Notice of Job Vacancy will be posted for the vacant job and the employee most rightfully entitled to the job under the terms of the Local Seniority Agreement will be awarded the job provided he bids for the job within the specified period."

Management feels that the Union's approach to this problem is erroneous, in light of other provisions of the Local Seniority Agreement, added by amendment after its original negotiation in December of 1954, which it believes support its position here. 5

It is noted that Appendix V first was negotiated in December of 1954 and is applicable to the Blast Furnace Department only. 6

Management then points out that in April of 1955, the Local Seniority Agreement was modified by a new provision inserted in then Section E - General Provisions, reading as follows: 7

"The Company will continue to post notices of job vacancy when a regular occupant of a position above the Labor Pool level has been on

"sick leave for a period of thirty (30) days because of occupational or non-occupational sickness or injury."

Further amendment came in December of 1957, when the following provisions were added to then Section E:

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"The Company will post notices of job vacancy when it can be anticipated reasonably that vacation replacements will be required on a given position continuously throughout the vacation season. Such notices will be posted only when the Company concludes that the vacancy is to be filled."

The Company says that since those modifications of the Local Seniority Agreement, Appendix V has been applied to govern selection of employees to be upgraded for short-term or day-to-day vacancies, but that they have not been applied for vacancies of extended duration even though such vacancies were temporary in nature. It is said, for example, that replacement for an incumbent of a job who was absent due to illness has been selected in accordance with the provisions of Appendix V when such absence was for less than 30-days' duration. When such absences extended beyond 30 days, the language of General Provision F-1 has been applied and a displaced incumbent or the senior incumbent of the next lower job has been assigned to the vacancy even though movements across turns or across furnaces were involved.

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Management notes also that Appendix V of the Local Seniority Agreement was negotiated in 1955, long before introduction of EV's in the Basic Agreement in 1963. Thus, it is said that the parties reasonably could not have contemplated that the 13-week absences of EV's would be governed by Appendix V.

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In light of the Local Seniority Agreement as a whole, the Company at least by the Step 4 meeting agreed that the vacancies in question were temporary, but it insists that they were the kind of temporary vacancies governed by the General

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Provisions of Section F-1 of the Local Seniority Agreement and therefore were filled properly by the employees with incumbency status as Kepper, rather than day-to-day temporary vacancies to be controlled by Appendix V, which require move-ups on the furnace and turn involved.

The Union disputes this and notes that, even were Management right in that regard, it did not "post" these vacancies as required by F-1. Management responds that it has not been the normal practice to go through the posting and bidding procedure in situations where there were employees then on lower-rated jobs who previously had established incumbency status on the temporarily vacant job. In those situations, the Company alleges that it has been customary, without posting and bidding, to fill the vacancy with the employee with most department service who has incumbency status on the vacant job, and that posting and bidding normally have been confined to the filling of permanent vacancies in cases where the bidder does not then have incumbency on that job but will acquire it if he becomes the successful one. 12

FINDINGS

The Union claim that vacancies resulting from EV's are temporary very likely is sound as a general proposition and certainly is correct under the terms of this Local Seniority Agreement. But, that is not the end of the matter. The critical issue rather is whether these EV vacancies were the kind of temporary vacancies governed by Appendix V of the Local Seniority Agreement or the clearly different kind of temporary vacancies controlled by Section F-1. 13

Objective reading of the Local Seniority Agreement as a whole makes it clear beyond doubt that the local parties at Edgar Thomson sought to foresee and to provide solutions for three different fact situations regarding moving employees up to work higher-rated jobs which have been vacated by another employee for any one of several different reasons. 14

The permanent vacancy is the first such situation. It may arise, among other reasons, from the death, retirement, quit, or discharge of an incumbent and is covered by Section A - 15

Promotions and Appendix III - Procedure For Posting And Applying For Job Vacancies. That situation need not be examined here, for these were not permanent vacancies.

In the general category of temporary vacancies, the Local Seniority Agreement dealt, at least with respect to the Blast Furnace Department, in a different manner with each of two separate situations: (1) the vacancy resulting from the relatively short-time absence of the regular incumbent who is expected to return and (2) the vacancy resulting from the comparatively longer absence of the regular incumbent who is expected to return. This technique of handling temporary vacancies of relatively short duration different from those of known substantial duration is not at all unusual.

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Under the provisions of Appendix V, the parties provided for one of the two kinds of temporary vacancies. The pertinent part of Appendix V reads as follows:

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"Temporary vacancies which arise on position jobs because the scheduled employee is off work will be filled by moving employees on the furnace up the promotional sequence. For example, if the Keeper on #2 Furnace does not report for work as scheduled, the Keeper Helper (First) on #2 Furnace will be upgraded to Keeper provided he has the ability and physical fitness to perform the job; the Keeper Helper (Second) on #2 Furnace will be upgraded to Keeper Helper (First) in the same manner, etc. In filling such vacancies, employees will not be moved from one furnace to another except when it is necessary for Management to make such moves because qualified employees are not available to move up in the regular manner."

The evidence indicates that when those provisions are applied, the regular incumbent's name is allowed to remain on the posted schedule even though it is known that he will be absent from work for a relatively short time because of illness or accident, because he is on a regular vacation, or because of some other reason of comparatively short duration. By leaving the regular incumbent's name on the schedule even though it is known that for a relatively short time he will not be at work, the situation calling for application of Appendix V is created because then "...the scheduled employee is off work..." and the other employees in that furnace crew are moved up. There is nothing in this record to suggest, however, that Appendix V ever was applied to a temporary vacancy of known substantial duration.

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It should be noted that Section 13-F of the Basic Agreement does not contain a specific definition of "Temporary vacancies." Thus, the parties locally have been free to clarify applications of 13-F by recognition of the varying problems created by short-time, day-to-day absences as opposed to absences which, although temporary, are of known substantial duration.

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That they have done so here becomes clear when Appendix V, above, is compared with Section F-1, as follows:

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"The Company will continue to post notices of job vacancy when a regular occupant of a position above the labor Pool level has been on sick leave for a period of thirty (30) days because of occupational or non-occupational sickness or injury. The Company will post notices of job vacancy when it can be anticipated reasonably that vacation replacements will be required on a given position continuously throughout the vacation season. Such notices will be posted only when the Company concludes that the vacancy is to be filled.

"Such vacancy will be filled in accordance with the provisions of Appendix III - Procedure for Posting and Applying for Job Vacancies, and the employee selected to fill such vacancy will be considered to have established incumbency on such vacant job and will be placed temporarily on the seniority list for such vacant job."

That language also refers to "temporary" vacancies, but ones which are longer than those treated within Appendix V.

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With that distinction made in the Local Seniority Agreement, it is not surprising to find the eighteen instances shown on Company Exhibit 4 where temporary absences in the Blast Furnace Department, known to be of substantial duration, were treated as temporary vacancies but were not filled by moving up employees on that furnace and turn under Appendix V, but were filled as were the EV vacancies here by the longest-service employee with incumbency status on the temporarily vacant job or by the longest-service incumbent then on the next lower job. Those eighteen instances arose between 1955 and 1962 and include temporary but relatively long absences arising from the regular incumbents' illness, accident, imprisonment, assignment as vicing foreman, and temporary promotion to a higher bargaining unit job.

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Thus, in light of the difference in the manner in which Appendix V treats relatively short temporary vacancies in the Blast Furnace Department, as opposed to the provisions of Section F-1 for temporary vacancies of known substantial duration, and in view of the divergent methods employed over the years since 1955 for dealing with the two situations, it is apparent that the local parties actually have provided the answer to the present problem. That is, they have dealt with relatively long temporary vacancies, arising from a wide variety of causes, under Section F-1 but have treated shorter temporary

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vacancies in the Blast Furnace Department as falling within the coverage of Appendix V. The Board must apply the same solution. Thus, there was no violation of Appendix V in Management's filling these EV vacancies of more than three months' duration with the longest-service employees who already had acquired incumbency status on the Keeper job.

The Union cites Case G-103 as supporting its view that regular vacation absences create temporary vacancies. But that is not disputed here, nor is it now denied that EV absences give rise to temporary vacancies. Case G-103 recognizes, moreover, that relatively short temporary vacancies may be treated differently from those which are known to be of longer periods. Paragraph 11 of that Award reads as follows:

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"Commonly the application of Section 13-F is clarified locally by agreement or long established practice. It is not unusual, for example, to find local recognition that unexpected turn-to-turn vacancies (as arising from unexpected absences on the given turn) will be filled under 13-F by employees on the particular turn involved. Such a policy, of course, recognizes the manifest inefficiency (in terms of schedule juggling and overtime) of attempting to fill such vacancies by assigning the longest continuous service employee in the unit, but working other turns. On the other hand, the parties locally may agree that vacation vacancies, or other vacancies of known substantial duration, will be filled by the senior employee in the unit, requesting such assignment, even though working on a different turn."

The Union reads the third paragraph of Section F-1 as supporting its position, as follows:

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"No incumbency shall be recognized for temporary service on a job. Temporary service includes, but is not limited to, service resulting from absenteeism, sickness, vacation relief, knock-out schedules, or assignment to a Labor Pool job."

That language does not carry the Union's point, however, since it merely defines temporary service, and Management never has claimed that the two employees who filled these temporary vacancies were on anything but temporary service. Each of the extended vacationers, regular incumbents of the Keeper job, went back on that job when he returned to work, thus displacing the temporary incumbent, as recognized in the tenth paragraph of Section F-1 of the Local Seniority Agreement. 26

It should be noted in general that the Local Seniority Agreement provides for an employee's gaining incumbency status on a job as the result of promotion to it to fill a permanent vacancy, under the posting and bidding procedures of Appendix III on the basis of length of service (department or division) under Section A. Should the employee later be rolled back in a force reduction under Section B, the incumbency status he has gained gives him an advantage over employees without incumbency status, when future vacancies, temporary or permanent, open up on that job. More pertinent to the present problem, the fifth paragraph of Section F-1 of the Local Seniority Agreement provides for an employee's acquiring temporary incumbency status on a job, as a result of promotion to a temporary vacancy of known substantial duration. If that temporary incumbent later should be displaced, he becomes a "temporary former incumbent," under the eighth paragraph of Section F-1, and he, too, has an advantage over non-incumbents for purposes of filling subsequent temporary or permanent vacancies, but stands behind all employees who have acquired permanent incumbency status on that job. As recognized in the tenth paragraph of Section F-1, when the extended vacationers returned to work here, they displaced the temporary incumbents who had filled the EV vacancies. 27

Finally, the Union notes that these EV vacancies lasted from June 28 to October 3 and therefore did not exist "...continuously throughout the vacation season," (May 1 to October 1) under the language of the fourth paragraph of F-1. But, in light of Company Exhibit 4, it is clear that the local parties have administered Section F-1 over the years in such manner as to indicate their intent that it was to cover various kinds of temporary vacancies of known substantial duration in addition to those expressly spelled out there. Indeed, two earlier EV vacancies, one on the Stove Tender job and one on the Gas Washer, occurred in April of 1964 and were filled under Section F-1, without complaint and without suggestion that they should have been governed by Appendix V.

Accordingly, the grievance must be denied.

AWARD

The grievance is denied.

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


 Clare B. McDermott
 Assistant Chairman

Approved by the Board of Arbitration


 Sylvester Garrett, Chairman