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United States Steel Corporation Heavy Products Operations Gary Steel Works and United Steelworkers of America Local Union 1014

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BOARD OF ARBITRATION

Case Nos.
USS-5145-H; -5146-H

March 31, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Gary Steel Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1014

Grievance Nos.
A-63-233; A-63-203,
A-63-237, A-63-238,
A-63-239, A-63-335,
A-63-336, A-63-351.

Subject: Holiday Pay.

Statement of the Grievance:

USS-5145-H

Grievance No. A-63-233

"We, the undersigned, and in behalf of all other affected employees in Gary Works, contend that Management was unfair in their action of not paying the employees their Holiday Allowance for Labor Day September 2, 1963, Pay Period Ending 9-7-63, of which they (Management) did not have proper cause. We therefore request of Management to comply with the 1962 Basic Labor Agreement, as amended June 28, 1963.

2. USS-5145-H; -5146-H

"Facts: Same as Above. Also, Management is discriminatory and unjust in their actions of paying some employees their Holiday Allowance, and, denying others the same.

"Remedy Requested: We therefore request of Management to comply with the 1962 Basic Labor Agreement, as amended June 28, 1963."

This grievance was filed in the Third Step of the grievance procedure October 1, 1963.

USS-5146-H

Grievance No. A-63-203

"We, the undersigned and on the behalf of all employees of Division #5, contend that Management is unfair and unjust and in violation of our agreement in scheduling us three (3) days the week of Sept. 1, thru Sept. 7th, 1963, also with the understanding that we would be paid for the Holiday, (Sept. 2, 1963) with the 3 day schedule, which we did not receive.

"Facts: Management is in violation of Section 1, 2, 10 and 11 of the April 6, 1962 Labor Agreement.

"Remedy Requested: We are requesting that the day in question (Sept. 2, 1963) be paid to us and Management refrain from this practice."

3.

USS-5145-H; -5146-H

This grievance was filed in the Second Step of the grievance procedure September 19, 1963.

Grievance No. A-63-237

"We, the undersigned, and all other affected employees of the Electric Shop, contend Management is unfair and unjust when they refuse to pay us our Holiday pay.

"Facts: On September 3, 1963, through no fault of our own, we were denied entrance to the Plant. We further contend this is a good cause for not working as scheduled. Management is in violation of Sections 1, 2 and 11D of the April 6, 1962 Labor Agreement.

"Remedy Requested: We therefore request that Management cease this practice and pay us for the Holiday pay we were unjustly caused to lose."

This grievance was filed in the First Step of the grievance procedure September 30, 1963.

Grievance No. A-63-238

"We, the undersigned, contend Management is unfair and unjust, when they denied us the Holiday pay. (September 2, 1963.)

"Facts: On Sept. 3, 1963, we had just come off of our scheduled vacation, we reported to work and were refused entry into the Plant. We proceeded to try to telephone the Pattern Shop to report that we were unable to get into the Plant and received no answer to the many times we've

called. We further contend that in view of this and that we had just returned from our vacation. Management has no right to refuse us the Holiday pay. Management is in violation of Sections 1, 2, and 11-D of the April 6, 1962 Labor Agreement.

"Remedy Requested: We request Management cease this practice and pay us our loss in earnings that we were unjustly caused to lose."

This grievance was filed in the First Step of the grievance procedure September 30, 1963.

Grievance No. A-63-239

"We, the undersigned, and all other affected employees of the Fabrication Dept., contend Management is unfair and unjust when they refuse to pay us our Holiday pay.

"Facts: On September 3, 1963, through no fault of our own, we were denied entrance to the Plant. We further contend this is a good cause for not working as scheduled. Management is in violation of Sections 1, 2 and 11-D of the April 6, 1962 Labor Agreement.

"Remedy Requested: We request that Management cease this practice and pay us for the Holiday pay we were unjustly caused to lose."

This grievance was filed in the First Step of the grievance procedure September 30, 1963.

Grievance No. A-63-335

"We, the undersigned, and all other affected employees, contend that Management is unfair and unjust, when they refuse to pay us for the Holiday.

"Facts: On September 3, 1963, we reported for work and were denied entrance to the Plant. We further contend that we were willing and able to work, but were denied the right, through no fault of our own. Management is in violation of Sections 1 and 11-D of the April 6, 1962 Labor Agreement.

"Remedy Requested: We request Management cease this practice and pay us for the Holiday we were so unjustly caused to lose."

This grievance was filed in the First Step of the grievance procedure October 3, 1963.

Grievance No. A-63-336

"We, the undersigned, contend Management is unfair and unjust when they refused to pay us holiday pay.

"Facts: On September 3, 1963, we reported to Management we were unable to enter the Plant through no fault of our own. We further contend we were willing and able to work but were denied the right. Management is in violation of Sections 1, 2 and 11-D of the April 6, 1962 Labor Agreement.

"Remedy Requested: We request Management cease this practice and pay us for the holiday we were so unjustly caused to lose."

This grievance was filed in the First Step of the grievance procedure October 3, 1963.

Grievance No. A-63-351

"I, W. Grayson, Check No. 16-106, employed in the Hot Top House, contend that Management is unfair and unjust by denying me

6.

USS-5145-H; -5146-H

Holiday Pay for September 2, 1963. I request that I be paid for the Holiday. Management is in violation of Sections 1, 2, and 11 of the April 6, 1962 Labor Agreement, as amended June 28, 1963.

"Facts: Management is in violation of Sections 1, 2, and 11 of the April 6, 1962 Labor Agreement, as amended June 28, 1963.

"Remedy Requested: That W. Grayson, Check No. 16-106, be paid for the Holiday, September 2, 1963."

This grievance was filed in the First Step of the grievance procedure October 8, 1963.

Contract Provision Involved: Section 11-D-2-c of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of the Award: The grievances in USS-5146-H are sustained. The grievance in USS-5145-H is dismissed.

BACKGROUND

Case Nos.
USS-5145-H; -5146-H

These two cases present eight grievances from various departments of Gary Steel Works which claim that employees who were prevented from reporting for work on their first scheduled turns following a holiday by an unauthorized work stoppage and picketing at gates, in which grievants did not participate, are entitled to pay for the unworked holiday since their failure to work was excused under Section 11-D-2-c of the April 6, 1962 Agreement, as amended June 29, 1963.

1

Commencing on Saturday, August 31, 1963, and continuing to about noon on Tuesday, September 3, an unauthorized work stoppage occurred in the Axle and Wheel Mills of the West Mills Division at Gary Steel. During that time, pickets assembled at some or all plant gates in such masses that certain employees attempting to report for work were denied entrance to the plant. As a result, work was interrupted and eventually it became necessary to shut down certain basic facilities.

2

Case No. USS-5064-H involved a related request by Salaried employees at Gary Steel, arising from the same Labor Day event as is present here, and there the Board said that this unauthorized work stoppage

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"...was characterized, on occasion, by such recognizable labor dispute characteristics as car rocking, linking of arms to restrict or bar entrance, and carrying of placards."

The Labor Day holiday fell on Monday, September 2, 1963, and each of the more than 100 grievants named in USS-5146-H was scheduled to work on Tuesday, September 3, three on first turn, over 100 on second turn, and one on third turn. Grievants came to the plant intending to work and were prevented from doing so by pickets. At various times during the day, some grievants succeeded in contacting Supervision by

4

phone and reported their inability to enter the plant. Some of those employees apparently were told that Supervision had heard that they could get in through the Toll Road Gate at Buchanan Street. Grievant Grayson, however, is the only named grievant who entered the plant.

Putting Grayson's case to one side for the moment, Management withheld holiday pay for the unworked Labor Day holiday on the ground that grievants were ineligible under 11-D-1 and -2 because they did not work their first scheduled workday following the holiday and because their failure to do so, since it was caused by an unauthorized work stoppage and picketing, was not "...because of sickness or because of death in the immediate family or because of similar good cause."

The Company urges that, since the two specific causes mentioned in 11-D-2-c are "sickness" and "death in the immediate family," that the "similar good cause" which follows must be limited to serious and purely personal reasons which prevent the given employee from reporting for work, as opposed to those causes which might affect the public at large. Management thus concludes that an unauthorized work stoppage and picketing by members of the very same Local Union to which grievants belong is not "good cause" "similar" to "sickness and death in the immediate family." Thus, it is said that grievants were ineligible for holiday pay.

The Union says that "similar good cause" includes any circumstance which prevents an employee from working, in spite of all his reasonable efforts to do so. It is said that all named grievants came to the plant intending to work but were prevented from doing so by picketing activities at gates and, therefore, that they are entitled to holiday pay.

Case No. USS-5146-H represents seven grievances filed by over 100 named employees. Case No. USS-5145-H represents one grievance filed under Section 6-E as a Union grievance by 13 Grievance Committeemen on behalf of other unnamed

employees who did not receive Labor Day holiday pay and who neither filed individual grievances nor signed one of the other seven grievances in USS-5146-H.

Grayson is the only one of the grievants who was scheduled on the 4-12 turn on Tuesday, September 3, 1963, and is the only named grievant who actually entered the plant and reported for work. By the time he reported shortly before 4:00 p.m., picketing had ceased.

Grayson changed into his work clothes, reported to No. 1 Hot Top House where he was to work, and was told by the Foreman there to report to No. 2 Hot Top House. When he arrived at the latter station, Foreman Chase told him that there was no work. Grayson went to the locker room to get his lunch, before going home, and when he came out he noticed employee Humphrey ahead of him on the roadway talking to Foreman Rollins. Rollins was in the driver's seat of his automobile, talking to Humphrey through the open window on the passenger side. Grayson did not join that conversation but caught up with Humphrey as he was walking out the gate, at which time Humphrey said that he could have worked that turn as a Hooker. Grayson was scheduled as a Laborer.

When Grayson came to work the following day, Foreman Chase asked him, "What did Rollins say to you yesterday?" Grievant replied, "Rollins didn't say anything to me." On Wednesday when grievant discovered that other Laborers with less seniority than he had been allowed to work on the Tuesday in question, he complained to Foreman Miller, and as a result he was allowed to "make up" that day by working on Thursday, which had not been a scheduled turn.

Foreman Rollins says that when he approached in his automobile, Humphrey and Grayson were walking together toward the gate. He stopped his car in the right lane and spoke through the open window on the passenger side to the two men

who remained in the walkway. He says he told them that word had just been received that if they would go back to the Hot Top House they would be put to work. Rollins says that he spoke through the window loud enough for both men to have heard him.

Accepting Foreman Rollins' view of that conversation, the Company thus urges that Grayson simply declined work which was offered to him and, therefore, that he, too, is ineligible for holiday pay under 11-D-2-c because his failure to work his first scheduled turn following the holiday was not "...because of sickness or because of death in the immediate family or because of similar good cause." 13

FINDINGS

The grievances in USS-5146-H present a pure problem of interpretation of Section 11-D-2-c. 14

Management's view of that language is that proper weight must be given to each of the three words "similar," "good," and "cause." If that be done, it is said that "similar good cause" which would excuse failure to work the first scheduled turn before or after a holiday must be confined to areas of health and personal emergency. 15

It appears to the Board, however, that the word "similar" refers, not exclusively to the nature of the event which prevents an employee from working, but to the question of whether that event, whatever its nature and regardless of whether it affected only one employee privately or the public at large, effectively prevented the employee from working, in spite of all his reasonable efforts to do so. In this view, 16

"similar" relates more to the effectiveness of the event in preventing the employee from working, in spite of all his reasonable efforts, than it does to the kind of event which prevented his doing so.

Both parties have cited various awards supporting their respective positions from other bargaining relationships in the steel industry, several of which involved employees who were denied holiday pay because an unauthorized work stoppage by other employees, as here, had prevented their working the first scheduled turn before or after a holiday. There is no real occasion for the Board to accept or reject the reasoning or results of any of those awards. The Company, however, would distinguish two Bethlehem decisions on the ground that there the employees actually reported for work but were sent home because certain facilities could not operate because of the unauthorized work stoppage. That seems an insufficient difference, however, since no matter whether grievants were stopped at the gate or actually got into the plant, they did all that reasonably could have been required of them and thus their failure to work was because of a "similar good cause."

17

Moreover, grievant Grayson actually reported for work here and nevertheless was denied holiday pay. Grayson came into the plant, changed to his work clothes, and attempted to work at two different stations but was told that there was no work and was sent home. He was allowed later to make up that lost turn. Having done his best to go to work at each of two different stations, it could not reasonably be concluded that Grayson then would have declined, without explanation, an offer of work made to him later just before he went out the gate. Such behavior would have been completely inconsistent with his intention as manifested by his entire course of conduct up to that time. In view of those considerations and in the further light of Management's later allowing Grayson to make up that lost turn, it must be found that he did not hear, or was not included in, the offer of work made by Foreman Rollins.

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It should be noted here that none of the grievants actually participated in the unauthorized stoppage or picketing, and there is no basis on which the Board could embrace the Company suggestion that, simply because grievants did not report for work that day, they became by that fact alone participants in the unauthorized activities of other employees, proscribed by Section 4-3. Adoption of that view would read into the Agreement a kind of collective-guilt principle not sanctioned or required by any of its provisions.

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Accordingly, the grievances included in USS-5146-H will be sustained.

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The grievances in Case USS-5145-H was filed by thirteen Grievance Committeemen, attempting to allege a violation of an obligation of "...the company to the union as such," under Section 6-E, on behalf of all other unnamed employees who did not receive Labor Day holiday pay and who neither filed individual grievances nor signed one of the seven grievances in USS-5146-H.

21

From the beginning Management has insisted that this is an improper subject matter for a Union grievance under Section 6-E. When the defect was pointed out in Step 3, the Union said it could name individual employees referred to and their particular circumstances, and the Company said it would review specific cases involving employees so identified. No such identification was given.

22

Holiday pay provisions of the Agreement can be applied only in light of specific fact situations, which are of nearly infinite variety, some of which would qualify an employee for holiday pay and others of which would not. Thus, the grievance in USS-5145-H, without stating the particular situations of any named, aggrieved employees, really does not present any holiday pay question which the Board can decide, and does not "...allege a violation of the obligations of the Company to the Union as such." Accordingly, it will be dismissed.

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7.

USS-5145-H; -5146-H

AWARD

The grievances in USS-5146-H are sustained. The grievance in USS-5145-H is dismissed.

24

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

Clare B. McDermott

Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration

Sylvester Garrett

Sylvester Garrett, Chairman