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United States Steel Corporation Sheet and Tin Operations Geneva Works and United Steelworkers of America Local Union 2701

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BOARD OF ARBITRATION

Case No. USS-5151-S

February 14, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Geneva Works

and

Grievance No. MS-3-19-64

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

SUBJECT: Overtime.

Statement of the Grievance: "We, the undersigned employees charge the Company with violation of the agreement, Section 11-C-1-D, wherein they have refused to pay overtime rates for hours worked on 6th and 7th days, Feb. 10 and 11, 1964.

"We maintain that any change from our non-normal agreed to schedule voids said schedule, and any violations incurred should be paid at overtime rates. We therefore request all monies due us as a result of said schedule change, be paid."

This grievance was filed in the Second Step of the grievance procedure March 2, 1964.

Contract Provisions Involved: Sections 10-D-1 and 11-C-1-d of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of the Award:

Under the facts of the present case the grievance is sustained, and the grievants are entitled to be paid overtime for Monday, February 10, 1964.

BACKGROUND

Case No. USS-5151-S

This grievance from a group of Machinists at the Geneva Works Machine Shops presents an overtime claim under Section 11-C-1-d of the April 6, 1962 Agreement, as amended June 29, 1963. The Section provides in relevant part that overtime rates shall be paid for: 1

"Hours worked on the sixth or seventh workday of a seven-consecutive-day period during which the first five days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as provided for in Subsection D of Section 10 - Hours of Work."

Section 10-D-1 provides in its relevant part as follows:

"All employees shall be scheduled on the basis of the normal work pattern except where: ... (c) schedules deviating from the normal work pattern are established by agreement between plant Management and the grievance committee."

These grievants work a non-normal schedule mutually agreed to under Section 10-D-1 (c). In the week beginning Sunday, February 9, 1964 they worked other than their regular hours on two days, in accordance with changes posted the previous Thursday. The grievants' agreed non-normal schedule and the schedule they worked in the week in question, and in the preceding and following weeks, are compared below: 2

Agreed

Non-

Normal

Schedule

February

Turn:

	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>TH</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>TH</u>	<u>F</u>	<u>S</u>

No. 1

No. 2								0	8	8	8	0	8	8				0	0	8	8	8
-------	--	--	--	--	--	--	--	---	---	---	---	---	---	---	--	--	--	---	---	---	---	---

No. 3

No. 3	0	0	8	8	8	8	8								8	8						
-------	---	---	---	---	---	---	---	--	--	--	--	--	--	--	---	---	--	--	--	--	--	--

Schedule

As Worked

Turn:

No. 1

8 8

No. 2

0 8 8 8 0

0 0 8 8 8

No. 3

0 0 8 8 8 8 8

8 8

As the comparison shows, on Friday and Saturday, February 14 and 15, the grievants worked the first turn (12 midnight - 8:00 a.m.) instead of the second turn (8:00 a.m. - 4:00 p.m.) of the agreed non-normal schedule.

The Union argues that the Company posted, and the grievants worked, a non-normal schedule different from the agreed non-normal schedule; that inasmuch as the non-normal schedule which the Company instituted in the week in question was not the non-normal schedule agreed upon under Section 10-D-1 (c), it did not fall within the exception provided under Section 11-C-d-1; that accordingly, Monday, February 10, was a sixth day worked in a seven-consecutive-day period during which the first five days were worked and so became an overtime day; and that therefore the Company violated Section 11-C-d-1 when it failed to pay the grievants at the overtime rate for the hours worked on that day. In support of its position the Union cites the Board's decision in Case G-171.

The Company contends that the grievants worked in accordance with the mutually agreed non-normal schedule on February 10, the day for which the Union claims overtime pay, and also on the two succeeding days; and that the fact of their having

worked the first instead of the second turn, on the two remaining workdays of the week in question, cannot be held to void retroactively the entire non-normal schedule for the week. The Company argues further that the facts and the problem in Case G-171 are clearly distinguishable from this case, that the present type of request was rejected by the Board in Cases G-44 and N-267, and that under the latter holdings the instant type of change in a non-normal schedule is clearly permitted by the language of 10-D-3.

The Company argues also that, as in Case N-267, the Company did not act capriciously so as to undermine the agreed schedule or render it meaningless; that the change in schedule was occasioned by a regular 2-year, major overhaul of the powerhouse generator, for which 24-hour coverage was required in the presence of an outside company's representatives; and that other Machinists in addition to the grievants were scheduled for a day or two on the first turn. According to the Company, the only other alternatives available to it were to work employees back to back for 16 hours or upset the schedules of all Machinists, changing their days off. The Company adds that in accordance with the Agreement it posted the schedule changes by the Thursday preceding the week in question, and that under the local agreement, changes comparable to the instant one have also been made at the request of the Union. 6

FINDINGS

The factual situation in the present case is not the same as either that found in Case G-171, cited by the Union, or in Cases G-44 and N-267, cited by the Company. Unlike the latter, the issue in this case is whether a day occurring during the week for which the agreed non-normal schedule was changed, and where none of the days had already been paid at overtime, is compensable at overtime rates. 7

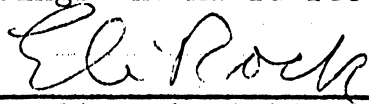
In Case G-44, upon which the Company has here principally relied, the change in the schedule occurred after the previous Thursday's posting and was for a reason beyond the Company's control insofar as the evidence revealed. In addition, since one of the days in the first five days of the 7-consecutive-day period was compensated at overtime, that day could not under Section 11-E-1 be counted further "for any purpose," in determining overtime liability. In the present case the grievants worked pursuant to a posted schedule for the week in which the overtime payment is claimed. The schedule as posted was a non-normal schedule - which had not been agreed upon - for the entire week. Thus, none of the hours worked under the posted non-normal schedule could be said to have been worked pursuant to a schedule which had been mutually agreed upon.

Under 10-D-3 of the Basic Agreement, as well as under the applicable local agreement, the Company has the right to change schedules. This does not, however, dispose of the question of possible overtime payments where the effect of the change is to substitute, for the agreed-upon non-normal schedule, another non-normal schedule which has not been agreed upon. Under the various circumstances present in the case, the situation here cannot be regarded as falling within the exception specified in Section 11-C-1-d. In accordance with the language of that Section, overtime must therefore be found to be due for Monday, February 10, 1964, as the sixth day worked in a seven-consecutive-day period.

AWARD

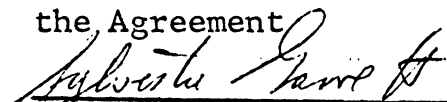
Under the facts of the present case the grievance is sustained, and the grievants are entitled to be paid overtime for Monday, February 10, 1964.

Findings and Award recommended
by



Eli Rock, Arbitrator

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



Sylvester Garrett, Chairman