11-23-1965

United States Steel Corporation Sheet and Tin Operations Fairless Works and United Steelworkers of America Local Union 4889

Sylvester Garrett

BOARD OF ARBITRATION

Case USS-5193-S

November 23, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Sheet and Tin Operations
Fairless Works

and

Grievance No. SFL-64-207

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

SUBJECT: Incentive Administration.

STATEMENT OF THE GRIEVANCE: "We, contend that Rev. 3 to masonry incentive plan 8721-126 does not allow equitable earnings. The STV are set too low, so we therefore request an adjustment."

This grievance was filed in the Second Step of the grievance procedure June 23, 1964

CONTRACT PROVISIONS INVOLVED: Section 9-C-4 of the April 6, 1962 Agreement, as amended June 29, 1963.

STATEMENT OF THE AWARD: The grievance is sustained. Grievants are entitled to a liberalization of their incentive standards by 2-1/2% and shall be made whole for loss of earnings accordingly.

BACKGROUND Case USS-5193-S

This grievance by Bricklayers and Helpers in the 1
Masonry Department of Fairless Works contends that Revision 3 to their incentive fails to meet the earnings protection requirements of Section 9-C-4.

The General Indirect Crew - Masonry Incentive Ap- 2
plication No. 8721-126 originally was installed January 29, 1956, to cover masonry requirements for the Blast Furnaces, Open Hearths, Soaking Pits, and Reheating Furnaces then in use, as well as all other masonry work in the plant. Revision 1 was involved in Case USC-1564, decided September 20, 1963. Meanwhile, Revision 2 had been installed February 4, 1962, and was cancelled effective September 29, 1963. This was followed by an interim period extending over 16 pays, with earnings set at 121%. Revision 3 was installed May 10, 1964, and resulted in the present grievance, asserting that the earnings are too low for purposes of Section 9-C-4.

Over the life of Revision No. 3, up to the time of 3
the hearing, it yielded an average pay performance only slightly in excess of 118%, compared with 121% reference period earnings. There is no suggestion that the employees have not been responding satisfactorily to the new incentive. In this situation the Union sees no room for doubt that the incentive fails to meet the earnings protection requirement of Section 9-C-4.

The Company explains the seeming failure of the earn- 4
ings to meet the test of Section 9-C-4 on the ground that direct-producing units--and especially the Open Hearth--have not been performing at the levels which the Industrial Engineers anticipated (based on past experience) when the standards in Revision 3 were developed. The Engineers estimated that Open Hearth earnings would average 170%, the Soaking Pit earnings would run 139%, and the Blast Furnace earnings would run 127%. Approximately 70% of the earned standard hours from all of the direct-producing units are generated from the Open Hearth alone.

Had the direct crews actually performed at these estimated levels, says the Company, the Masonry Crews would have averaged 121% earnings, or better. Since earnings levels in the Open Hearths, Blast Furnaces, and Soaking Pits largely determine the Masonry Crews earnings, Management believes that it has fully met its responsibility under Section 9-C-4.

Over 14 consecutive pay periods following installation 5
of Revision No. 3, relevant pay performances, and the Masonry Crew Index of Measured Performance, ran as follows:

	DIRECT UNITS			
	Blast Furnace	Soaking Pits	Open Hearth	
	3 Pay Period Average			Masonry Crew
Date	IPP	IPP	IPP	IMP
5/23/64	124	142	166	120%
6/ 6/64	124	139	165	119
6/20/64	125	138	165	119
7/ 4/64	126	136	163	118
7/18/64	126	135	161	116
8/ 1/64	127	133	162	117
8/15/64	126	135	165	118
8/29/64	126	136	167	119
9/12/64	125	136	165	119
9/26/64	124	138	165	119
10/10/64	123	142	162	118
10/24/64	122	145	162	118
11/ 7/64	123	145	162	118
11/21/64	123	143	164	119

In reply, the Union notes that in 1961 grievants' earnings ran around 121%, even though Open Hearth furnace crews averaged only 163%. The Union also notes that the Open Hearth furnace operating level has averaged 8.2 furnaces over the life of Revision No. 3 (this represents the maximum operating level), and that Open Hearth earnings have been lower than in earlier periods when the furnace operating level was lower. It is surprising to the Union that at such a high operating level grievants' earnings should be lower than in earlier years when operations were at lower levels. Although the Company assumed Open Hearth earnings at 170% in developing Revision 3, the Union notes that in only two of five years (commencing with 1961) have Open Hearth incentive earnings averaged as much as 170%. They ran 163% in 1961, 170% in 1962, 171% in 1963, 166% in 1964, and 166% in 1965 to date of hearing. Finally, the Union stresses that the incentive earnings of the Masonry Crews actually have been calculated on the basis of the minimum Masonry Crew hours, as calculated by a formula in the incentive, rather than on the basis of actual hours worked by the Masonry Crews. Thus, the Masonry Crews typically have worked less hours per pay period than the theoretical hours figure used in calculating their earnings. 6

FINDINGS

The Company stresses Board decisions in Cases USS-4890-S and T-1036 as establishing a principle that reduced earnings under an indirect incentive, which are attributable to reduced performance by direct-producing crews, do not provide basis for adjustment or replacement of the given indirect incentive. It is clear that the Board did so decide in each of the two cited cases, but the problem in those cases was quite different from the present. 7

Here the Board must determine whether a newly in- 8
stalled replacement incentive meets the test of Section 9-C-4. In the two cited earlier cases the issues arose under incentives which had been installed in 1956 in one instance, and in 1957 in the other. Thus in those cases the Union claimed that changed conditions had arisen (which required either adjustment or replacement of the given indirect incentive) where the only actual change was a decrease in performance of direct crews whose earnings were used to determine the earnings of the grievants under their given incentives. No issue of compliance with Section 9-C-4 was presented or decided in either such case.

The present case thus appears to be the first of its 9
kind to arise under Section 9-C-4 of the April 6, 1962 Agreement, as amended June 29, 1963, and which reads:

> "When an incentive is replaced, pursuant to Section 9-C-2-b above, the incentive earnings expressed as a percentage above the standard hourly wage rate on the replacement incentive for a job covered thereunder shall not be less than the percentage of incentive earnings received as an average by regularly assigned incumbents of that job under the replaced incentive during the three months preceding its cancellation provided that the average performance during such three-month period is maintained. As to any job which did not exist under the replaced incentive, the average percentage calculated for jobs which did exist shall apply under the same conditions."

This language makes clear the relationship between 10
the protected level of incentive earnings, under a replacement incentive, and the maintenance of "average performance" during the reference period. This language was written against the background of the second decision in Case USC-719, which arose under the 1956 Agreement. At that time Section 9-C-4 read:

> "When an incentive plan is replaced, the average hourly earnings on any job which was covered by the replaced incentive shall not be less than the average hourly earnings received by regularly assigned incumbents of the job under the replaced incentive plan during the three months immediately preceding cancellation of the replaced incentive plan, provided that the average performance during such three-month period is maintained."

Among other problems, Case USC-719 presented a major 11
interpretive issue as to the meaning of the proviso that "average performance" (during the reference period) should be maintained by employees as a condition of their enjoyment of the incentive earnings protection therein provided. For present purposes it is significant that the Findings set forth in the March 23, 1961 Opinion in Case USC-719 included the following:

"Interpretive difficulty arises under 9-C-4 in that the first impression one draws from its language is that flat dollars-and-cents per hour minimum guarantees are established, applicable to each job under replaced incentives. Problems inherent in such a literal reading are immediately apparent. While it may be relatively easy to compute average hourly earnings during a 3-month reference period (provided operations were in progress during all or most of the period), there is no criterion available for computing average 'performance' under the Agreement. But Section 9-C-4 seeks to establish some kind of equation or relationship between the two elements of earnings and performance.

"More important, a fixed dollars-and-cents per hour earnings floor on each job may be impractical from the viewpoint of each party. Such a floor ultimately (and sometimes quickly) will become meaningless as protection to the employees where there are substantial increases in the Standard Hourly Wage Rates over the years. Likewise, a fixed floor guarantee would fail to recognize that earnings under properly designed incentives may fluctuate widely in light of general business conditions, special operating problems, and other conditions beyond the practical control of the employees or Management.

"Thus, it is more than a coincidence that the Company has sought a realistic approach in applying Section 9-C-4 and that nothing in the Union's presentation suggests basic disagreement. While the Union in no sense has accepted

> any particular Company technique in applying 9-C-4, it does embrace the view that 9-C-4 realistically requires that earnings opportunities under replaced incentives be preserved on the basis of earnings experience in the three months prior to its cancellation.
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> "Both parties have stressed that Section 9-C-4 should be applied on a case-by-case basis for many of the reasons which made it wise so to proceed in dealing with equitable incentive compensation issues. Thus there is no occasion for the Board to pass upon the detail of any particular technique which Management may utilize (be it a 'make-up factor,' a continuance of a 'new incentive differential' developed earlier, a 'special allowance,' or the like) as long as the end result is that the basic requirement of 9-C-4 is met--that there be no reduction in earnings opportunity under replaced incentives."
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> (Underscoring added.)

Since the landmark decision of Case USC-719, the Board consistently has dealt with problems of "average performance" under Section 9-C-4 on a case-by-case basis. This policy seems to be the only practical approach available to the Board for many of the reasons which made such a case-by-case approach essential in dealing with problems of equitable incentive compensation issues, as outlined in the May 4, 1954 decision in Case USC-316 (Interim Award No. 2). 12

In applying Section 9-C-4, therefore, the Board is unable to accept any particular incentive theory for measuring performance. Section 9-C-4, moreover, refers to performance of the given employees under their incentive, and not to the performance of other employees under other incentives. Solely on the basis of the evidence now in hand in the present case, therefore, the Board concludes that the disputed incentive has failed by 2-1/2% to meet the earnings protection provided in Section 9-C-4. The standards should be liberalized by 2-1/2%, and grievants made whole for loss of earnings accordingly. 13

AWARD

The grievance is sustained. Grievants are entitled to a liberalization of their incentive standards by 2-1/2% and shall be made whole for loss of earnings accordingly. 14

BOARD OF ARBITRATION

Sylvester Garrett

Sylvester Garrett, Chairman