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BOARD OF ARBITRATION

Case No. USS-5228-S

December 30, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Fairfield Works

and

Grievance No. SFS-64-248

UNITED STEELWORKERS OF AMERICA
Local Union No. 1013

Subject: Seniority - Relatively Equal Ability

Statement of the Grievance: "I charge Management with violation of bid procedure Agreement, dated June 29, 1963. Section 5, Local Agreement dated July 11 & Aug. 4, 1963"

This grievance was filed in the First Step of the grievance procedure October 29, 1964.

Contract Provisions Involved: Sections 4 and 13 of the April 6, 1962 Agreement, as amended June 29, 1963, and the July 11, 1963 Fairfield Steel Works Seniority Rules and Regulations.

Statement of the Award: Grievant shall be promoted to the job of Motor Inspector Helper in Seniority Unit No. 107 with service as of October 29, 1964, the date Eddins was assigned to the job of Motor Inspector Helper, and be paid all monies he lost.

BACKGROUND

Case USS-5228-S

The Union charges violation of Section 4-7 and Section 13 of the April 6, 1962 Agreement, as amended June 29, 1963, and Section V-A-4-c of the July 11, 1963 Fairfield Steel Works Seniority Rules and Regulations, hereinafter referred to as Local Seniority Agreement, in the filling of a permanent vacancy on the job of Motor Inspector Helper in Seniority Unit No. 107 of the Blast Furnace Department of Fairfield Works.

1

Grievant was employed by Fairfield Steel Works on September 18, 1947. He is a Negro. Until the middle of 1963 he was a Laborer in the Construction Department performing manual work, mostly outdoors. In 1963 he was transferred to the Plate Mill because the Company needed employees able to move up in the line of promotion. There, he worked as a Sweeper, Scrap Machine Operator, and Millwright Helper. When a reduction in force occurred, he filled Laborer jobs in the pool and was assigned to the Blast Furnace area. His time cards for 1964 show him working as Laborer, and filling temporary vacancies in the jobs of Dustman, Boilermaker Helper, Blacksmith Helper, Casthouse Craneman, Blast Furnace Oiler, Skip Pit Cleaner, Pit Machine Helper, Stock Unloader, Stove Tender Helper, and Machinist Helper.

2

On October 7 a permanent vacancy in the job of Motor Inspector Helper, Seniority Unit No. 107, was posted at the plant gate. The line of promotion in this seniority unit is as follows:

3

UNIT 107

Switchboard Tender
J15-270, JC-18

Switchboard Tender Helper
J15-275, JC-11

Motor Inspector
J15-225, JC-14

Motor Inspector Helper
J15-230, JC-6



(In the Third Step Minutes the posting date was given as October 5, 1964 but at the hearing the Company again mentioned October 7 as the correct date.)

4

Grievant applied for the promotion on October 8, 1964. Under Section V-A-4-a of the Local Seniority Agreement, notices of permanent vacancies shall remain posted seven calendar days, and under Section V-A-4-d Management shall post the appointment of the individual selected to fill the permanent vacancy after a four-day selection period. No appointment notice was posted.

5

Although many Negroes have been promoted to formerly "white" jobs, grievant's application for promotion to this particular vacancy was brought to the attention of the Assistant General Superintendent, Coke and Steel, Fairfield Works, immediately after the seven-day posting period had expired. Management expected a grievance since a decision had been made, based on the Company's view of the relative ability factor, to promote an employee, Eddins, with five months of plant service in preference to the senior grievant with 17 years of plant service.

6

Eddins had worked for the Corporation in its Ore Mines since November 3, 1939, had progressed from the job of Underground Electrician Handyman to the job of Underground Electrician (Job Class 16), frequently filling in as Group Leader, and had enhanced his knowledge of electrical engineering by outside studies. His service was terminated on June 22, 1962 when the Ore Mines shut down.

7

The record does not show his whereabouts between 1962 and May 17, 1964 when he started to work as a pool Laborer at Fairfield Steel. Out of 101 turns worked between May 17, 1964 and October 7, 1964, he was assigned to 68 temporary turn vacancies on the job of Motor Inspector Helper in Seniority Unit 107. On six turns he filled the job of Switchboard Tender Helper in the same seniority unit. His application for the permanent vacancy is dated October 6, 1964, as is that of another employee.

8

After grievant filed his grievance on October 29, 1964, the date Eddins seemingly started to work as Motor Inspector Helper, a permanent vacancy opened up in the job of Millwright Helper to which grievant was promoted on November 25, 1964.

9

The Union argues that grievant has amply demonstrated his ability to fill jobs where he received instructions or worked closely with another employee. The Primary Function of the Motor Inspector Helper reads:

10

"To assist Motor Inspector in inspecting, repairing, replacing, installing, adjusting, and maintaining all electrical equipment in a major producing unit or assigned area."

(Underscoring added)

The Working Procedure is as follows:

"1. Receives instructions from Motor Inspector regarding work to be performed.

2. Assists Motor Inspector in procuring tools and equipment in preparation for repair job.

3. Assists Motor Inspector in inspecting electrical equipment, reporting obviously defective equipment to Motor Inspector.

4. Assists Motor Inspector in erecting scaffolds and performing simple rigging as necessary.

5. Assists Motor Inspector in dismantling, cleaning, repairing, replacing, installing, maintaining, assembling, lubricating, and adjusting electrical equipment.

6. Makes minor repairs and adjustments as directed by Motor Inspector.

7. Assists Motor Inspector in making mechanical repairs as required in connection with the servicing of electrical equipment.

- "8. Assists Motor Inspector in working with repair crews as directed on emergency breakdowns.
9. Cleans up working area at completion of job.
10. Returns tools and equipment to storage area at end of turn."

(Underscoring added)

Under the classification part of the job description, the pre-employment training is classified on the basis of "carry out simple verbal instructions under close supervision."

For this type of job, the Union argues, the ability of grievant was relatively equal to that of the successful bidder. The Board ruled in CI-31 that ability which is not evidenced in superior performance on the job in question cannot be used in making a decision on a promotion. 11

The Union is convinced that grievant was denied the promotion because it would have integrated a formerly all-white seniority unit. This, the Union, submits, is in violation of Section 4-7 of the Basic Agreement under which the Company and Union pledged a continuing policy to apply the provisions of the Basic Agreement to all employees without regard to race, color, religious creed, or national origin. 12

The Company takes the position that the assignment of Eddins to the job of Motor Inspector Helper was made solely on the basis of his superior ability by applying the criteria of Section 13-A-1 of the Basic Agreement. In addition, his selection was justified under Section V-A-4-c of the Local Seniority Agreement which provides: 13

"Management shall have four days following the seven-day-posting period in which to make a fair evaluation of the requirements of the job and the abilities of the employees (as to skills, physical fitness, and prior training to fill the job in question and also progress up through the line of promotion) and, provided there are qualified bidders, if the abilities of two or more bidders are relatively equal, selection will then be made on the basis of plant continuous service dates as defined in Rule XII below."

(Underscoring added)

Section V-A-4 was incorporated in the Local Seniority Agreement allegedly pursuant to Section 13-L-7 of the Basic Agreement which reads as follows:

14

"Any vacancy that is not filled in accordance with the provisions of Subsections A, B, and H of this Section shall be made available to a qualified employee in any other seniority unit in the agreed upon area (as provided for hereinabove). The rules for application of the seniority factors, including service dates, and method of applying for the vacancy shall be those agreed upon by the local parties."

This Section, the Company argues, permits adoption of rules for the application of seniority factors dissimilar to those required by Section 13-A-1 of the Basic Agreement and involved in Case CI-31. Specifically, Section V-A-4-c provides that the successful bidder be prepared to "progress up through the line of promotion."

It is argued that the provisions of Section V-A-4-c are particularly meaningful in a small seniority unit, where one bottom job fills temporary vacancies in a few jobs, and that they must receive reasonable interpretation in larger lines of promotion. Here, Eddins was able, at the time of his appointment, to fill the jobs of Motor Inspector and Switchboard Tender Helper whereas grievant would have required training.

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FINDINGS

The uniqueness of this case was aptly described by Counsel for the Company in his concluding statement:

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"Admittedly, this is an unusually strange situation. We will seldom have experienced Electricians bidding on Motor Inspector Helper jobs. There just aren't that many around, but we did in this case, and this is the case that you have to decide."

Although the evidence presented by the Union does not establish a conclusive finding that grievant was denied his deserved promotion on the basis of race, there can be no doubt that grievant's race was significantly involved in the background of this case. Two employees submitted a bid for the job one day before the notice of the permanent vacancy was posted. Company officials experienced great difficulties in applying the provisions of the Local Seniority Agreement although Eddins' ability was allegedly so superior. Finally, a notice of Eddins' selection never was posted, as required by the Local Seniority Agreement.

17

There can be no doubt that grievant is able to fill the job of Motor Inspector Helper since he had filled jobs, requiring basic ability similar to that of the Motor Inspector Helper. Therefore, under the principles established by the Board in Case CI-31, the ability of the successful and unsuccessful bidder to fill this particular job was relatively equal, since the job merely requires ability to carry out simple verbal instructions under close supervision.

18

Therefore, the Board has to examine whether Section V-A-4-c of the Local Seniority Agreement, adopted by the local parties pursuant to Section 13-L-7 of the Basic Agreement, modifies application of the seniority provisions of the Basic Agreement under these circumstances.

19

Neither of the first two seniority factors can be applied with the same mathematical precision as that of "continuous service." The Board has given the provisions of Section 13-A reasonable interpretation in Case CI-31. By the same token, the words "progress up through the line of promotion" found in Section V-A-4-c of the Local Seniority Agreement should be given a reasonable interpretation.

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There are jobs which are merely temporary way stations in a line of promotion and which traditionally and consistently spell higher rated jobs. In those situations, it would be unreasonable to require the promotion of an employee, unable to participate in the spell arrangement. This, however, is not the situation here. In the month of November, immediately after his successful bid, Eddins filled the job of Switchboard Tender Helper only once, and the job of Motor Inspector not at all.

21

The required ability to progress need not be immediately present; but the employee must have the potential to acquire it after a reasonable period of training; any other interpretation would render Section 13-F of the Basic Agreement meaningless. There is no evidence in the record to suggest that grievant will not be able, with reasonable training, to fill any job in this seniority unit.

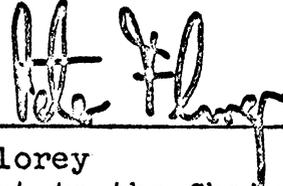
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AWARD

Grievant shall be promoted to the job of Motor Inspector Helper in Seniority Unit No. 107 with service as of October 29, 1964, the date Eddins was assigned to the job of Motor Inspector Helper, and be paid all monies he lost.

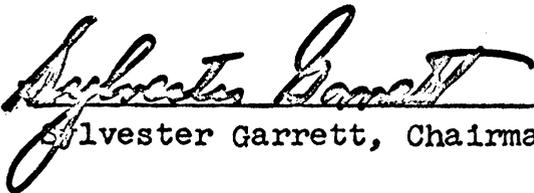
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Findings and Award recommended pursuant to Section 7-J of the Agreement, by



Peter Florey
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman