4-23-1965

United States Steel Corporation Heavy Products Operations Homestead Works and United Steelworkers of Americ Local Union 3063

Sylvester Garrett

BOARD OF ARBITRATION

Case No. USS-4857-H

April 23, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Homestead Works

and

Grievance No. S-64-2

UNITED STEELWORKERS OF AMERICA
Local Union No. 3063

Subject: Salaried Employee's Sick Leave Status Attaching Before Scheduled Vacation.

Statement of the Grievance: "The Company violated Sec. 20, Paragraph A and B, Section 2, Paragraph B and all other paragraphs that might apply to the agreement between U.S. Steel Corp. and United Steelworkers of America Salaried Employees dated April 6, 1962 (revised addition).

"Facts: The grievant reported off sick on Jan. 3, 1964. That same day his family doctor ordered him to a hospital. He was granted only one day's salary, namely Jan. 3, 1964. The contract states that salary shall continue during disability in accordance with a table of limitations. The table shows that an employee with 20 years of service and over, shall be entitled pay for the balance of the pay period and 13 additional periods. The grievant falls in this category.

"It has been a established practice in Production Planning Department at Homestead, that when an employee became sick and was on salary continuance prior to a scheduled vacation, the vacation was postponed to a later date after the employee was physically able to return to work.

"Remedy Requested: The union requests that the grievant be granted salary continuance as outlined in the contract until his doctor says he is physically able to return to work. Upon this release, the employee shall begin his vacation the following day or at the beginning of the next payroll week."

This grievance was filed in the First Step of the grievance procedure February 3, 1964.

Contract Provision Involved: Sections 12-C and 20 of the April 6, 1962 Salaried Agreement, as amended June 29, 1963.

Statement of the Award: The grievance is sustained, and Management shall pay grievant's widow the EV pay due grievant for the seven weeks of EV to which he was entitled, at the rate set out in Section 8 of the January 1, 1964 Savings and Vacation Plan (Revised).

BACKGROUND Case No. USS-4857-H

This grievance from the Production Planning Department of Homestead Works claims that Management's viewing grievant as being on extended vacation (EV) for the period January 5 through February 22, 1964, rather than as being on sick leave with salary continuance, violated Section 20 of the April 6, 1962 Salaried Agreement, as amended June 29, 1963. 1

Grievant, then working as a Job Class 7 Order Correspondent, had over twenty years' continuous service and was one of four employees in the Production Planning 100" Mill Seniority Unit eligible for EV's in 1964. He was notified on November 18, 1963, that his EV would begin January 5, 1964, which was his first choice. 2

Early on the morning of Friday, January 3, 1964, grievant became ill and was ordered to the hospital by his personal physician. His wife reported him off sick. 3

The Union insists that Management was informed on Friday morning, January 3, that grievant had been hospitalized. It says that it then notified the Company that grievant should be considered as on sick leave with salary continuance for the period of his illness and that his EV, scheduled to begin Sunday, January 5, should be postponed until he should be cleared to return to work by his physician. 4

The Union position in this regard is that grievant automatically went on sick leave with salary continuance as of Friday, January 3, under Section 20, and that that status necessarily continued until he would have recovered or until his sick leave entitlement (13 pay periods) would have been exhausted, and only then could he be viewed properly as being on EV. 5

The Company denies that grievant's sick leave status attached as of Friday, January 3. It says that grievant was paid his regular biweekly salary rate for the biweekly pay period ending January 11 and including the Friday which he did not work, as part of the biweekly salary guarantee under Section 9-B-2 and was not paid for the Friday on which he became ill under the sick leave provisions of Section 20. 6

The Company claims, in any event that, although it learned of grievant's illness and hospitalization on Friday, January 3, no request to change or postpone grievant's scheduled EV was made until Wednesday, January 8, at which time grievant already had begun his EV. 7

Moreover, the Company says it then advised the Union that changing or postponing grievant's EV period would result in undue dilution of experienced employees in the unit and thus would jeopardize its orderly operation. 8

Management argues that this unit had to schedule four EV's (52 weeks) and 72 weeks of regular vacation in 1964. All four of the employees entitled to EV's were Order Correspondents, three in Job Class 7 and one in 8. At the then prevailing level of operations, five or six Order Correspondents were employed, four in Job Class 7, which included grievant at the Stainless Office and three men at the 100" Mill Office, and one or two in Job Class 8, one directing order operations at the latter station. 9

Although the four Job Class 7 Order Correspondents worked under the same job description, they dealt with a different kind of product. Three worked in the 100" Mill Office, processing alloy orders and carbon and high-strength orders, and one (grievant) worked at the Stainless Conditioning Yard about one-half mile away, processing stainless orders. The Company therefore argues that the class 7 Order Correspondents at the 100" Mill Office were not readily familiar with the allegedly peculiar knowledge of stainless products required at grievant's station. 10

It is said that all of this led Production Planning Supervision to conclude, on the basis of past experience, that only one of the four Order Correspondents who were entitled to EV's in 1964 could be off at any one time. Thus, their EV's were scheduled consecutively, beginning with grievant's on January 5, 1964. 11

Hence, the Company concludes that it was compelled to refuse the request to change or postpone grievant's EV because of his intervening illness, since there was not a sufficient number of employees with necessary skills and knowledge to enable it to make the necessary moves which acceding to the request would have required. 12

The Company believes its action was justified under the language of 12-C, "...but the final right to allot extended vacation periods and to change such allotments is exclusively reserved to the Company...in order to insure the orderly operation of the plants." 13

The Union feels that Management unfairly inflates the difficulties of granting the request, insisting that there were several employees reasonably trained to back up the two stations on one job on which moves would have had to have been made. 14

The Union charges also that in the past Production Planning Supervision has rescheduled a regular vacation when it came up during a period of an employee's absence on sick leave. 15

The Company replies that this was done at its discretion and because rescheduling a regular vacation of two to four weeks could be accomplished without disrupting the Unit's orderly operation but that those considerations do not apply to rescheduling of an EV. 16

Apparently, grievant was cleared to return to work by his physician on February 21, 1964, and Production Planning Supervision was so informed. Grievant did not return to work, however, until the week of April 5, since Management viewed him as being on extended vacation until that time. 17

It must be noted that after the Step 4 meeting and before the hearing in this case, grievant died. In view of his intervening death, the remedy actually requested by the Union is that grievant be considered as having been paid sick-leave salary continuance under Section 20 for the period of his illness from January 3 through February 22, rather than as having received EV pay for that period and, therefore, that the vacation pay for the seven additional weeks of EV allegedly due, be paid to his widow under the last sentence of Section 6-E. 18

Pertinent provisions of the Salaried Agreement are quoted below: 19

Section 12-C-1

"Ninety days prior to the beginning of each calendar year each employee who is expected to become eligible for entitlement to an extended vacation benefit (EV) during such year under the Savings and Vacation Plan (Revised) (the Plan) shall be requested to specify the extended vacation period he desires. Extended vacations will so far as practicable be granted at times most desired by employees (longer service employees being given preference as to choice); but the final right to allot extended vacation periods and to change such allotments is exclusively reserved to the Company (subject to 5) in order to insure the orderly operation of the plants. Except as provided otherwise in 3, such vacations shall be scheduled for consecutive weeks equal to the net weeks provided under the Plan and the weeks of regular vacation to which the employee is entitled for the calendar year in which the extended vacation starts.... The extended vacation shall start at any time during the year within which the employee becomes entitled to the EV or the following calendar year. If, however, such scheduling would result in undue dilution of experienced employees in a subdivision of a department such as a bureau, section or equivalent because of extended vacations starting in any one year, then the Company may schedule the starting dates of such vacations so that not more than 20% of those employees in the Senior Group on that subdivision will have such vacations starting in any given year; provided, however, all such vacations will be scheduled to start by December 31 of the year following the five-year period in which the employee became entitled to an EV."

Section 12-C-5

"Employees scheduled for extended vacation must be notified at least 90 days prior to the commencement of such vacation, and a scheduled extended vacation shall not be changed without at least 60 days' notice to the employee, unless the employee consents to the schedule or change in schedule."

Section 20-A

"The provisions of this Section shall cover employees absent from work as the result of personal disability caused by accident or sickness (excluding pregnancy) and shall be in lieu of all prior practices and policies pertaining to salary continuance during such absences."

Section 20-B-1

"Salary shall be continued during disability as defined in Subsection A of this Section at the employee's applicable training, starting, intermediate, or standard biweekly salary rate plus any personal out-of-line differential and the 18½¢ cost-of-living allowance in accordance with the following table of limitations.

"

Length of Continuous Service		Maximum Sick Leave Salary Continuance
0 to 8 Weeks	Balance of pay period and	0 pay periods
8 weeks but less than 6 months	Balance of pay period and	1 pay period
6 Months but less than 1 year	Balance of pay period and	2 pay periods
1 Year but less than 5 years	Balance of pay period and	4 pay periods
5 years but less than 10 years	Balance of pay period and	6 pay periods
10 years but less than 15 years	Balance of pay period and	8 pay periods
15 years but less than 20 years	Balance of pay period and	10 pay periods
20 years and over	Balance of pay period and	13 pay periods

"

Section 20-B-2

"Salary continuance in accordance with the above table shall constitute the maximum payments under this Agreement for an employee's absences from work due to one or more personal disabilities in any twelve month period; provided, however, that fractional initial pay periods for each disability for which salary is continued shall not be counted in the maximum salary continuance limitation set forth above....."

Section 20-B-5

"Salary continuance shall not be paid during any period while an employee is on paid vacation."

FINDINGS

Management lays great stress on Section 20-B-5, to the effect that "Salary continuance shall not be paid during any period while an employee is on paid vacation." But that provision does not lead to solution of this problem, for it begs the question. The issue is not whether grievant was entitled to vacation pay and salary continuance; the Union makes no such claim. The problem is whether grievant was or should have been considered as being on EV or whether, his illness having begun before the date of his scheduled EV, he actually was on sick leave with salary continuance. 20

As the parties recognized in the grievance proceedings, the bar of 20-B-5 would cover the situation of an employee already on vacation who then became ill. For instance, in Step 4 Management argued that Section 20-B-5: 21

> "...clearly indicates that the parties recognized that illness and vacation might run concurrently and under such circumstances the employee was not entitled to the benefits set forth in Section 20 of the Labor Agreement.
>
> "The Union's Representative stated that he was of the opinion that the cited provision of the Labor Agreement was not controlling in the instant situation. At best, this language was intended to apply only to an illness that might begin during

"the midst of a vacation, but certainly was not applicable in the case of an illness that commenced prior to the beginning of a scheduled vacation."

If grievant properly were viewed as on EV, he was correctly paid vacation pay and, his EV having extended beyond his illness, he was entitled to no more. If, however, grievant was actually on sick leave with salary continuance as of January 3, and necessarily for the balance of his illness through February 22, then he was paid under provisions of Section 20 and not 12, and he was entitled to other EV weeks, equal to the seven for which he was on sick leave, sufficient to make up a total of 13 weeks EV. Since grievant now is deceased, the only remedy would be to pay his heirs under the last sentence of Section 6-E the EV pay applicable to those seven weeks. 22

Significant facts preceding January 5 must be examined, as the parties recognize. Management, for instance, notes that in October of 1963 grievant had selected January as his first choice for the beginning of his 1964 EV because his poor blood circulation made it uncomfortable for him to work during cold weather. Grievant's request was the only one asking for EV in the first quarter of 1964. That choice was granted, and as of November 18, 1963, grievant was scheduled to begin his EV on January 5, 1964. But surely grievant's having been scheduled to begin his EV on January 5 cannot compel or justify ignoring any and all events occurring between November and January, so as necessarily to force grievant, come what might, to adopt EV status as of that date. That is, Management's final right to allot EV's and to change such allotments under Section 12 does not freeze events as of the time of the advance allotment so as to put the initial decision beyond challenge even though there have been substantial changes in material facts between the initial allotment and the beginning of the scheduled period. Thus, in the circumstances of this case it does Management no good to rely wholly on the fact that it had scheduled grievant's EV in November to begin on January 5, and, in all fairness, the Company does not rest entirely on that point. 23

It does insist, however, that grievant was not paid salary continuance for Friday, January 3, but pursuant to its policy was paid his regular biweekly salary rate for the entire biweekly pay period, including that Friday, under the biweekly salary guarantee stemming from 9-B-2. If that were an accurate view of events, however, the salary continuance provisions of Section 20 would be meaningless since, as the Company agreed at the hearing, grievant would have been paid presumably the same amount even if Section 20 were not in the Agreement. 24

A result which reads an entire section out of the Agreement is suspicious at best, and that is especially so here since the table of limitations governing the length of sick leave with salary continuance under Section 20 states expressly that the employee is entitled to the "Balance of pay period and" additional pay periods increasing with greater length of continuous service. Section 20-B-2 provides in addition that "...fractional initial pay periods for each disability for which salary is continued shall not be counted in the maximum salary continuous limitations set forth above." This indicates that, although payment for the fractional initial pay period in which disability commences is part of salary continuance, it does not count in determining whether an employee has exhausted his maximum allowance for any twelve-month period. Thus, whatever the origin of the biweekly salary guarantee for employees in other circumstances, the employee who becomes ill during a biweekly pay period is paid during his absence for the balance of that pay period under Section 20, because he is then on sick leave with salary continuance. 25

Therefore, the problem then facing Management was not whether grievant had an option to elect either to go on salary continuance or to accept his pre-scheduled EV; the Union does not so argue. Grievant then was on salary continuance. Nor was the question whether or not Management then reasonably exercised its duty, after reexamining EV scheduling in light of grievant's intervening illness, to give preference to grievant as a longer service employee for a different EV period. Since grievant was not going to be at work for some time in any event, because he was ill and in the hospital, the problem for Management at that time was to rearrange other employees' EV's as necessitated by grievant's absence due to illness. 26

This is not to say that the Company faced no real problem resulting from grievant's absence because of illness, but only that difficulties arising from absenteeism because of illness occur whether or not other employees later are scheduled for vacations. The fact of substantial regular and extended vacation absences of course added to Management's problems, as did the fact that grievant became ill so close to the time of his scheduled EV, but none of that justifies discounting seven weeks of grievant's salary continuance entitlement under Section 20 by transferring it to his EV entitlement under Section 12. 27

It must be concluded, therefore, that a Salaried employee who becomes disabled because of sickness or accident prior to the beginning of his scheduled vacation, goes on sick leave with salary continuance under Section 20 as of the date of his disability and continues in that status and may not be considered as on vacation until he recovers or his salary continuance allowance is exhausted. The necessary corollary is that under 20-B-5 a Salaried employee who becomes disabled after going on vacation is not entitled to sick leave with salary continuance during his vacation period. 28

Accordingly, the grievance will be sustained. 29

AWARD

The grievance is sustained, and Management shall pay grievant's widow the EV pay due grievant for the seven weeks of EV to which he was entitled, at the rate set out in Section 8 of the January 1, 1964 Savings and Vacation Plan (Revised). 30

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

Clare B. McDermott

Clare B. McDermott
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett

Sylvester Garrett, Chairman