6-28-1965

United States Steel Corporation Sheet and Tin Operations Fairfield Tin Mill and United Steelworkers of Americ Local Union 2122

Sylvester Garrett

BOARD OF ARBITRATION

Case No. USS-4904-S

June 28, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Fairfield Tin Mill

and

Grievance No. 155-2231

UNITED STEELWORKERS OF AMERICA
Local Union No. 2122

Subject: Past Practice - Filling of Temporary Vacancies

Statement of the Grievance: "We, the undersigned, assigned Maintenance employees protest Managements action in discontinuing the local agreement which we have to fill assigned Maintenance Crews as scheduled.

"We request all monies lost."

This grievance was filed in the Second Step of the grievance procedure February 28, 1963.

Contract Provisions Involved: Sections 2-B and 13 of the April 6, 1962 Agreement.

Statement of the Award: The grievance is denied.

This grievance asserts that Management violated Sections 2-B and 13 of the Basic Agreement with respect to assigned maintenance employees in the Cold Reduction Department of Fairfield Works when it ceased filling all temporary vacancies in assigned maintenance groups early in 1963. 1

The Union contends that it entered into an oral local agreement with Mr. Alec Henry, the then Superintendent of the M&E Department, in late 1958. All temporary vacancies were filled until February 1963 by Machine Shop and Tractor Shop "Helpers when Helpers were available." In the event that no Helpers could be assigned, members of the M&E crews were "doubled over" or additional personnel were called out. 2

The Union stands on the local working condition rooted in the agreement between Union and Mr. Henry, and states that it is not attempting to prove a crew size case and therefore is not engaged in re-arbitration of Case No. T-314. 3

The Union notes that the claimed practice was first violated when the Maintenance Department was placed under the jurisdiction of Operating people in January or February 1963. The responsible superintendent under this new arrangement, M. O. Smith, Jr., according to the testimony of grievant Headley, denied any knowledge of the verbal agreement with Henry and stated that he would not continue agreements made by other supervisors. As a result, temporary vacancies were not filled, as the Union notes with interest, until a few weeks prior to the arbitration hearing of this case in March 1965; the Union construes this to be belated recognition of the claimed agreement to fill all temporary vacancies. The Union finds it inconceivable that Superintendent Smith made no attempt to verify the agreement with Superintendent Henry, although Smith admitted on the stand that he "saw Henry around a lot." 4

The Company denies that a local agreement exists requiring the filling of all temporary vacancies in the assigned maintenance group and takes the stance that such an agreement would be unenforceable under Section 2-B-5. Management testimony conceded that 80 - 85% of such vacancies 5

are in fact filled but such filling of vacancies remains a Management prerogative. Once Management has arrived at a unilateral decision to fill vacancies, it is conceded that a Union-Company understanding on the method for filling vacancies may be extant. The Company brief states that "...it was understood that Helpers would be drawn from the Machine Shop, Tractor Shop, and Crane Crew, if they were available. A Machinist Helper would be drawn from the Machine Shop if a temporary vacancy in the Millwright crew was to be filled, and either a Tractor Repairman Helper from the Tractor Shop or a Wireman Electrician Helper from the Crane Crew would be drawn if a temporary vacancy in the Motor Inspector crew was to be filled."

When Superintendent Smith became responsible for assigned maintenance employees in September 1962, per his testimony, he made a diligent search of the records. The only document remotely directed toward the matter at issue was a Memorandum signed by Superintendent of Maintenance Henry and dated August 19, 1957. This Memorandum was entered into evidence as Company Exhibit 4 and reads as follows: - 6

"SUBJECT: Filling vacancies - Assigned groups

1. When it is necessary to fill in vacancies on the Assigned Mechanical or Electrical groups the party filling in the vacancy will not interfere with any step up involved for the regular scheduled crew members. When personnel are not available from shops and it is necessary to recall or hold over members of assigned crews to fill in vacancies and a step up is involved that does not interfere with a regular crew member being stepped up, the party being held over or called out to fill the vacancy will be stepped up to the vacancy. At all times the Foreman will inform the party concerned the occupational title he will be placed on before assigning him to work.

   When a shop employee is scheduled to fill vacation or extended sickness vacancies, he will, for the temporary period, be

"considered as a member of the crew he is assigned to, and will participate in the seniority rights accorded the crew.

2. When you find it necessary to work employees overtime, you will to the best of your ability divide the overtime among the employees in the respective groups."

The Company detects nothing in the quoted language requiring the filling of all temporary vacancies. 7

The Company readily concedes that temporary vacancies were filled until early 1963, but this was done at Management's volition and not as a result of a binding agreement to do so. Such an agreement would be tantamount to a guaranteed work force which would be devoid of contractual sanction. Even if the alleged agreement were considered entitled to Section 2-B-3 protection, the Company notes numerous equipment changes which have resulted in more complex operations at higher speeds and requiring higher skills than those possessed by Machine Shop and Tractor Shop Helpers. 8

The Company alludes to the Board's decision in Case T-314, issued in 1955, denying a Union contention that an enforceable working condition existed with respect to assigned maintenance crew sizes. Particular note is made of the following sentence: 9

"The evidence fails to show any established local working condition governing the size of the assigned maintenance group in the Cold Reduction Department."

FINDINGS

One of the two men capable of giving direct evidence regarding the alleged 1958 verbal agreement, Superintendent of Maintenance Henry, was not present at the hearing. The Company explains that he "had retired from employment with the Company at the time this grievance was filed." 10

It is clear that there was a practice from late 1958 until early 1963 of filling all temporary vacancies in the ranks of assigned maintenance employees. It is less clear from a welter of extrinsic evidence whether this practice was firmly based on a Union-Company agreement; evolved into an agreement by merely being pursued; or simply reflected Henry's predilection for filling vacancies. What is known is that Henry took the stand in T-314 in 1955 and testified at considerable length to the effect that no crew size existed in his department. The Board so found. Henry prefaced his remarks in his memorandum of August 19, 1957 by saying, "When it is necessary to fill in vacancies...." It would seem that this Superintendent never relinquished in testimony or writing Management's right to (1) determine whether a vacancy existed in fact and (2) to decide whether to fill it. It is equally apparent that this man, given a background of an arbitration hearing on point, would hardly have stumbled into an agreement handing over what he and the Company had gone to great pains to protect. This reasoning would seem to be buttressed by the absence in the record of any semblance of consideration running to the Company for the alleged agreement. 11

The basic weakness in the Union's case is that it is in fact asking for what it says it is not asking--a crew size for the assigned maintenance group, the size to be the number of employees as it appears on the schedule posted each Thursday. This would flank the Chairman's reasoning in T-314. Obviously it is entirely possible for subsequent events to reverse a decision but this is not the case on this record. 12

Union witness Headley's forthright deportment on the stand nourished the view that he sincerely believes he entered into a binding agreement with Henry. This "agreement," however, is not exempt from the uncertainty and general murkiness that customarily plague verbal agreements. What quite likely happened is that Henry said something to the effect that he filled vacancies in his department and went on to prove it by filling temporary vacancies for more than four years. And he filled these vacancies in a mutually agreed upon manner. It is understandable that the application of this manner to all vacancies gave rise to the Union belief 13

that the practice was rooted in an agreement, rather than that the manner of filling became effective after the threshold had been passed by Management determining that a temporary vacancy was to be filled.

AWARD

The grievance is denied.

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

David C. Altrock
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman