7-20-1965

United States Steel Corporation Sheet and Tin Products Irvin Works and United Steelworkers of America Local Union 2227

Sylvester Garrett

BOARD OF ARBITRATION

Case No. USS-4936-S

July 20, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN PRODUCTS
Irvin Works

and

Grievance No. A-61-304

UNITED STEELWORKERS OF AMERICA
Local Union No. 2227

Subject: Seniority.

Statement of the Grievance: "Employees request Management to comply with the seniority provisions of the Labor Agreement and the Local Seniority Agreement. Adjustment of wages to be retroactive.

"Violation: Section 13 and the Local Seniority Agreement."

This grievance was filed in the First Step of the grievance procedure December 21, 1961.

Contract Provision Involved: Section 13-A of the April 6, 1962 Agreement, as amended June 29, 1963, and the December 12, 1956 Local Seniority Agreement.

Statement of the Award: The grievance is sustained, and Management shall reimburse grievant for all earnings lost as a result of his improper displacement from the Tractor Operator job in Seniority Unit 15-a.

BACKGROUND Case No. USS-4936-S

This case from the Tin Wareroom of Irvin Works charges 1
that grievant's seniority rights under Section 13-A of the April 6, 1962 Agreement, as amended June 29, 1963, and the December 12, 1956 Local Seniority Agreement were violated by his displacement from the class 8 Tractor Operator job in Seniority Unit 15-a to the class 8 Tractor Operator in Unit 15-c, which pays considerably lower incentive earnings.

The disputed displacement occurred in December of 1961 2
and apparently lasted about four months. The grievance was filed in late December of 1961, was processed through the intervening steps of the grievance proceedings to a Step 4 meeting in June of 1962, and minutes of that meeting were signed in September of 1964, much of the intervening period apparently having been occupied by the local parties' efforts to sharpen the precise question involved, since it seemed that their arguments were not meeting on any common ground which could dispose of the grievance one way or the other.

For example, throughout the grievance proceedings, to 3
the extent that there had been any attempt to describe what had happened, it appeared that there had been an employee named King on the class 12 Expediter job, which is the top job in Unit 15-a (Packaging Material Manufacturing Crews). At the same time grievant was on the class 8 Tractor Operator job in that Unit, which job is at the level immediately below that of Expediter. During a force reduction in December of 1961, grievant was displaced to a class 8 Tractor Operator job paying lower incentive earnings in Unit 15-c (Stocking). The Union's initial argument was that Management had violated the Local Seniority Agreement by displacing grievant from Unit 15-a while retaining employee King there, since King had less Unit 15 service than grievant.

Management answered that King had an Expediter job 4
level date of 10-1-48, resulting from his assignment to that job at that time in the Management Alignment Program. It was said that this was superior to any claim which grievant might have at the Expediter job level. Moreover, although grievant had an earlier Tractor Operator job level date than King, it

was argued that there was a practice, applicable during periods of sharply reduced operations when there was only enough work for one man instead of two, under which the incumbent of the higher-rated job would perform duties of his own job and of the lower-rated job, all the while receiving the rate of the higher-rated job. In these circumstances, Management explained that King thus would remain at work as Expediter and handle also such Tractor Operator duties as were necessary. The Company thus saw no violation in retaining King in Unit 15-a even though he had less Unit 15 service than grievant. Hence, Management's position looked upon King's earlier Expediter job level date as the critical one.

The Union replied that King improperly had been given the 10-1-48 Expediter date at that time, since the alleged Expediter vacancy had not been posted and bid for then but simply had been given to King, which allegedly afforded him preferential treatment then and thereafter. 5

The Union argued also, in denying existence of any such practice as was urged by the Company, that the grievance arose because King performed both as Expediter and Tractor Operator, following grievant's displacement from Unit 15-a, and that this was wrong because grievant had greater Tractor Operator job level service than King. 6

It is thus clear that at least one of the Union arguments viewed the decisive date as grievant's earlier date at the Tractor Operator job level. 7

This was the posture of the case as presented by a reading of the grievance proceedings. 8

The Company brief disclosed for the first time, however, that it had not been King who had displaced grievant by the technique explained by the Company of his working a combination of Expediter and Tractor Operator duties, but that there had been two Expediters, King and an employee named Imblum, and that the force reduction had begun at the Expediter level. 9

Since Imblum had less service at the Expediter level than King, Imblum was moved down from that job during the force reduction to the Tractor Operator level and thus displaced grievant, since Imblum allegedly had an earlier Tractor Operator job level date than grievant.

Shortly after the hearing began, however, it became clear that, although Imblum had a Tractor Operator job level date of 5-17-48, Management's belief, as stated in its brief, as to grievant's proper Tractor job level date was mistaken. It then was obvious that, rather than grievant's Tractor Operator job level date being 1-18-49, his true Tractor Operator job level date was 2-1-47, and the parties so stipulated. 10

Even earlier in the hearing the Union had conceded that it no longer was attacking King's 10-1-48 Expediter job level date, and it agreed also that that would be King's proper date at the Tractor Operator job level. 11

FINDINGS

Relevant provisions of the Reduction in Force section of the December 12, 1956 Local Seniority Agreement are as follows: 12

> "When the factors of ability and physical fitness are relatively equal, any required displacement shall be made in the units listed under 'Seniority Units' on the following basis:
>
> 1. Any required displacements shall be made in the established promotional sequences within the units listed under 'Seniority Units' on the basis of length of continuous service on the job or at the job level

" from which employees will be selected for displacement in that promotional sequence. (For example, provided ability and physical fitness are relatively equal, the employee last placed on a given job or a given job level in an established promotional sequence shall be the first employee displaced from that job or job level.)

2. On displacement, the employee shall be demoted to the next lower job or job level in the applicable promotional sequence and, in case the incumbents in that job level have greater job level service than the displaced individual, he shall be demoted in the same manner to successively lower job levels."

In light of those provisions governing a force reduction and since it now is clear that grievant's Tractor Operator job level date is 2-1-47, which is earlier than King's 10-1-48 date at that job level and earlier than Imblum's 5-17-48 Tractor Operator job level date, there is no apparent reason for denial of the grievance. 13

With the force reduction beginning at the Expediter job level and apparently intended as reducing incumbents of that job by one, Imblum properly was displaced from the Expediter level under Paragraph 1 of the Local Seniority Agreement's Reduction in Force provisions since, as between Imblum and King, King had greater continuous service at that job level. 14

According to the requirements of Paragraph 2 of the Reduction in Force provisions of the Local Seniority Agreement, Imblum then properly was demoted to the Tractor Operator level, 15

where his continuous service at that job level should have been compared with that of incumbents at that level. That comparison, if grievant's true date at that job level had been used, should have shown that grievant had greater continuous service at that job level than did Imblum and, therefore, that grievant, rather than Imblum, should have remained at the Tractor Operator level.

When it became clear at the hearing that Imblum had in effect displaced grievant from the Tractor Operator job level, rather than King's having done so by the "combination" technique of his having remained as Expediter and also having performed whatever tractor-operation may have been required, Management asserted that it would not have taken more than 30 seconds for it to grant the grievance if it had been aware of those facts during the grievance proceedings. It insisted, however, that 90% of the discussion in and during these rather protracted grievance proceedings centered, at the Union's insistence, on whether King properly had been given the 10-1-48 Tractor Operator date during the Management Alignment Program in 1948, and that the parties never had discussed, indeed, that Management Representatives had not even been aware of, Imblum's part in the force reduction. The Company's argument therefore was that, although the facts as developed at the hearing might have shown that the grievance had merit when filed in 1961, since the comparison between grievant and Imblum had not come to light until 1965, the grievance was untimely by about three and one-half years and thus properly could not be sustained by the Board. 16

The Board cannot embrace that position, however, for it surely was clear that the main thrust of the grievance as filed protested grievant's being displaced from the Tractor Operator job. Granted, that the Union stated several reasons why it thought that displacement was improper, some of which may have been too late or otherwise without merit, but that cannot obscure the fact that the grievance was timely and was prompted by that displacement. Nor can it excuse the parties or the Board from determining the propriety of that displacement under relevant provisions of the Basic Agreement and the Local Seniority Agreement. 17

Thus, although it seems true that, at the Union's initiative, most of the parties' discussion involved grievant and King, the basic seniority problem from the very beginning nevertheless was whether grievant was entitled to remain at the Tractor Operator level. It now appears, on the basis of obviously important facts first disclosed at the hearing, that he was so entitled, and thus the Board cannot deny the grievance solely because a narrower argument occupied most of the parties' attention during the grievance proceedings. That is, the grievance protested grievant's removal from the Tractor Operator job, and it was filed in timely fashion in relation to that removal, and thus the fact that the parties spent too much time asserting and defending specific arguments which ultimately were not critical does not make the grievance untimely or excuse the Board from ruling on the real problem actually presented on the basis of full disclosure of all relevant facts. 18

If this force reduction had involved scores of employees and hundreds of individual movements, there might have been more force in Management's contention that the Union's argument unfairly shifted the parties' attention from the critical question. That is, if great numbers of employees had been moved about in the force reduction and if the Union had protested only the displacement of employee "A" and then in arbitration had attempted to change its position to an attack upon the fate of employee "B," Management would have standing to assert with force that there had been no timely grievance questioning its treatment of employee "B" and that it should not reasonably be expected to investigate and dig up all relevant facts relating to all movements and all employees who had been affected by the force reduction, including those not contested in the grievance proceedings. 19

But that is not what happened here. So far as can be determined from this record, this force reduction involved only one employee who was reduced from the Expediter level and who then demoted to the Tractor Operator level and displaced grievant. Those facts appear in the Company brief, and grievant's 2-1-47 Tractor Operator job level date was disclosed at the 20

hearing by the parties' stipulation. In those circumstances, it does not seem at all unreasonable to expect the parties, in discussion of a timely grievance protesting the only displacement that occurred, to have developed the facts relating to a comparison of job level dates of grievant and the employee who displaced him, and this would hold true even if one party had pressed arguments on other grounds.

Thus, the grievance must be sustained. 21

AWARD

The grievance is sustained, and Management shall reimburse grievant for all earnings lost as a result of his improper displacement from the Tractor Operator job in Seniority Unit 15-a. 22

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

Clare B. McDermott

Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman