United States Steel Corporation Tubular Operations Fairless Tube Works and United Steelworkers of America Local Union 5030

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Subject: Seniority - Physical Fitness.

Statement of the Grievance: "Request that management stop the practice of depriving me of my contractual rights under Scheduling and Seniority!"

"Facts: Management has refused to move the grievant up to Mobile Repairman, for no known reason, thus violating his seniority status!"

"Remedy Requested: Management cease & desist this practice & compensate me for all lost of earnings."

This grievance was filed in the First Step of the grievance procedure May 29, 1963.
Contract Provision Involved: Section 13 of the April 6, 1962 Agreement.

Statement of the Award: The grievance is denied to the extent that it was molded at the hearing to include a request that Management cease prohibiting grievant, as a Tractor Operator, from operating equipment on the "Not Approved" list.

The grievance is sustained to the extent that grievant was entitled to be assigned to the disputed temporary vacancy on the Mobile Equipment Repairman job, and grievant shall be made whole for loss of earnings accordingly.
This grievance from the Maintenance Department of the Fairless Division of Lorain Works claims violation of Section 13-F of the April 6, 1962 Agreement because of Management's refusal, on medical grounds, to assign grievant to a temporary vacancy on the Mobile Equipment Repairman job.

On May 27, 1963, grievant was working as a Job Class 8 Tractor Operator when a temporary vacancy occurred on the Job Class 14 Mobile Equipment Repairman job. Grievant's request that he be assigned to fill that temporary vacancy was denied on the ground that the Mobile Equipment Repairman must operate equipment which it repairs and that grievant was not physically fit because of poor vision - lack of depth perception - to operate various pieces of mobile equipment.

Grievant has been with the Corporation since 1945. He started at National Works then and, after a physical examination, worked as a Job Class 8 Crane Operator until 1950 when he requested transfer to another job which he worked until 1953.

In August of 1953 grievant transferred to Fairless Works. Following a physical examination there, the then Plant Surgeon (now Plant Medical Director) Clement recommended that he not be hired there for any job, not even as Janitor, because vision in his left eye was found to be 20/200 uncorrected, which Dr. Clement said was considered as being industrially blind. Supervision was informed of that medical recommendation, but it appears to be one which is not binding upon Management, and in grievant's case it was not followed. At any rate, grievant was employed at Fairless as a Tractor Operator in the Mobile Unit.

Grievant next was examined in November of 1954 as part of the regular and periodic examinations required of mobile equipment operators, and his vision was 20/20 in his right eye and 20/70 corrected in his left. This is said to result in grievant's having only 20% of normal depth perception.

Grievant was examined again in December of 1955, with substantially similar results.
The next examination was in October of 1957, and by then there had been slight deterioration to almost 20/100 corrected in his left eye. This time the Medical Department by then Assistant Plant Surgeon Suter recommended that he not be allowed to operate any mobile equipment. He continued to do so, however. In fact, all during this period of more than four years, grievant had been working as a Tractor Operator, driving various pieces of mobile equipment required of that job, as well as performing some short stints of days or weeks as Mobile Equipment Repairman.

Grievant next was examined in January of 1958, following an incident when the boom of a crane he was operating buckled, through no fault of his. His vision then was found to be 20/20 in his right eye and 20/80 corrected in his left.

Plant Medical Director Clement noted that grievant's left eye vision has never been better than 20/70 corrected and diagnosed his problem as congenital amblyopia, uncorrectible, explaining that this is a distortion of the lens of his left eye resulting in lowered visual acuity which causes an 80% impairment in his depth perception.

It was after the crane incident in 1958 that the then Manager of Industrial Relations Dilworth, who had not come to Fairless until 1956, first became personally aware of the problem of grievant's operating mobile equipment with his impaired vision. Dilworth then reviewed grievant's medical record and discovered that the Medical Department had recommended that grievant not be hired for any Fairless job in 1953 and, in 1957, that he not operate any mobile equipment. Dilworth pursued this problem with the Safety Engineer, the Medical Department, grievant's Grievance Committeeman and, ultimately, with grievant.

Dilworth said that if he had been involved in this matter at the outset, he would have decided that grievant could not operate any mobile equipment, but that many decisions already had been made regarding this point over the years from 1953. Further discussion was had with Dr. Clement regarding the possibility of
grievant's being cleared for operation of the service car and station wagon, only. Since grievant was licensed to operate an automobile, such clearance was given. Dilworth then discussed with grievant the possibility of coming to some mutually satisfactory list of pieces of mobile equipment which grievant could, and could not, operate. Grievant did not object to being restricted to the service car and station wagon at that time. The Grievance Committeeman was informed of this and neither agreed nor disagreed. This was not necessarily viewed as a final decision of what kinds of equipment grievant might operate but apparently was merely a workable solution to the immediate problem. Shortly thereafter the Apache truck (1½ ton stake truck) was added to the list of equipment which grievant was allowed to operate.

From January of 1958 until January of 1963 grievant operated those vehicles, working five steady dayturns per week. This arrangement for grievant seems to have prompted a grievance by other Tractor Operators in the Mobile Unit who claimed that he was being given special privileges which discriminated against them. This grievance was withdrawn "without precedent or prejudice" in March of 1962.

In late 1962 and early 1963 operation of the service car and station wagon declined to a point where there were not five days of work available on them, and grievant complained that he was not getting 40 hours per week while junior employees were.

That complaint prompted Industrial Relations again to review with the Safety and Medical Departments all pieces of equipment which Tractor Operators might be required to operate and the areas where they might travel in order to determine whether grievant safely could be allowed to operate others in addition to the service car and station wagon. In conjunction with this review, Dr. Clement arranged for grievant to be examined by an outside ophthalmologist, Dr. G. B. Sharbaugh. Dr. Sharbaugh's report found grievant's right eye to be 20/20 and his left 20/70 corrected and diagnosed his difficulty as congenital amblyopia with at least first-degree fusion. Dr.
Sharbaugh's opinion was that grievant had sufficient depth perception to drive a shop vehicle but that cranes and other high-precision equipment were to be excluded.

Following that ophthalmological report and review of mobile equipment and areas of travel, a joint Industrial Relations-Safety-Medical Department decision established a list of "Approved" and "Not Approved" mobile equipment which grievant could and could not operate, as follows:

<table>
<thead>
<tr>
<th>Approved</th>
<th>Not Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Car and Station Wagon</td>
<td>Straddle truck</td>
</tr>
<tr>
<td>Apache truck</td>
<td>Ram truck</td>
</tr>
<tr>
<td>Small Fork Lifts</td>
<td>Bulldozer</td>
</tr>
<tr>
<td>Dempster Dumpster</td>
<td>Highlift</td>
</tr>
<tr>
<td>Gasoline truck</td>
<td>Mobile Sweeper</td>
</tr>
<tr>
<td>Jeep truck</td>
<td>Flat Bed Truck</td>
</tr>
<tr>
<td>Dump truck</td>
<td>Mobile Crane</td>
</tr>
</tbody>
</table>

The distinction which Management sought to draw between those two lists of equipment was that operation of the "Approved" vehicles was most similar to operation of an ordinary automobile which may be driven without taking one's eyes off the road, and the "Not Approved" list includes those which require manipulation of other levers and gears which do take one's eyes off the road, which require travel through congested areas and precision maneuvering, or which have special problems, such as the height of the straddle truck and its large blind area, masts on the highlift which partially obscure vision, and the depth perception required for backing up the flat bed truck or for proper manipulation of the boom of the mobile crane.
The fact that Management will not allow grievant to operate seven of the fifteen pieces of equipment which a Tractor Operator might be called upon to drive or a Mobile Equipment Repairman to repair and sometimes operate is basic to the present dispute regarding the temporary vacancy on the latter job. The Company says that Mobile Equipment Repairmen often must operate the equipment to be repaired, either on test runs to determine if repairs have succeeded or to move equipment to or from the garage and, since grievant cannot operate safely about one-half of the equipment, he does not have basic ability to perform that job and, therefore, his assignment to a temporary vacancy on it would not be "...consistent with efficiency of the operation and the safety of employees..." under Section 13-F. Moreover, Management believes, in view of grievant's lack of depth perception, that he never will be able to perform the Mobile Equipment Repairman job and, therefore, that it is futile for him to be given training on it since he could not later qualify for permanent promotion to it. In short, Management says that the only safe way for grievant to be assigned as Mobile Equipment Repairman would be to make special arrangements for him, which would result in his handling only part of the job's normal tasks, different from all other employees assigned to it who must perform its full scope of duties.

The Union notes that grievant has been assigned as Mobile Equipment Repairman on both a temporary and a permanent basis for short periods in the past, which allegedly demonstrates his ability to handle that job.

The Company stresses that in October of 1955, following a very short period of permanent assignment as Mobile Equipment Repairman, grievant was removed from that job at his own request, and went back to Tractor Operator because he felt he could not perform the Mobile Equipment Repairman job without more training.

The Union replies that even after grievant voluntarily signed off the Mobile Equipment Repairman job he filed a grievance in January of 1956, claiming that he, rather than a
junior employee, should have been assigned to a later temporary vacancy on that job. Management's answer was that it had assumed that grievant's voluntarily signing off that job meant that he was not thereafter interested in filling it. The Union explained that grievant's asking to be relieved from that job on a permanent basis could not be taken as indicating that he no longer was interested in filling temporary vacancies on it which would give him the training necessary for his qualifying for later permanent assignment should it become vacant. On that basis, Management agreed in Step 3 of that grievance that it would consider grievant for future temporary assignments to the Mobile Equipment Repairman job and paid grievant for 111 hours on which junior employees had been assigned to temporary vacancies on it at the difference between the rate of the job grievant actually had worked and the rate of the Mobile Equipment Repairman.

In the grievance proceedings and at the hearing, the parties devoted considerable attention to a list of thirteen incidents between 1954 and 1958 dealing with occurrences which in Management's view support its determination that grievant is not able to perform the Mobile Equipment Repairman job. Only four of those events bear on grievant's poor vision, which the Company indicated at the hearing was the main basis for its refusal to assign grievant to the temporary vacancy in dispute. Those four events on the list (Nos. 6, 10, 11, and 12) describe one occasion in 1955 and three in 1957 of grievant's allegedly running into wires, columns, walls, and doors while operating the mobile crane and straddle truck and an instance of claimed improper operation of the crane.

FINDINGS

This case really involves two different problems. That is, although the only question formally raised by the grievance was whether in light of his deficient vision, grievant was entitled to be assigned to the temporary vacancy on the Mobile
Equipment Repairman job on May 27, 1963, both parties at the hearing requested that the Board dispose also of the problem of the validity of Management's prohibiting grievant, as a Tractor Operator and independent of the temporary vacancy question, from operating any equipment on the "Not Approved" list. Since the latter question lurks in the background of the formal issue, it would have to be dealt with in any event. Therefore, this Opinion will rule on the temporary vacancy question, as well as the propriety of grievant's being restricted to "Approved" equipment, and the latter question will be met first.

Regarding that problem, the Union stresses the following peculiar behavior of several segments of Management as tending to support its argument that the Company's present position is untenable.

At the outset, after the Fairless Medical Department had recommended, on grievant's initial appearance there, that he not be employed on any job, not even as Janitor, because his vision without glasses was so bad as to be considered industrially blind, he was nevertheless assigned as a Tractor Operator.

Over the next two years, grievant twice reappeared for physical examinations and the Medical Department knew these were administered periodically to employees who operate mobile equipment, and no improvement was found in grievant's vision, and yet no medical recommendation regarding his operating such equipment was forwarded to Supervision.

Grievant next was examined, again as part of the periodic physicals required for mobile equipment operators, and his vision had deteriorated. This time the Medical Department recommended that he not be allowed to operate any mobile equipment. Again Supervision paid no attention to that recommendation, although by that time grievant had had all four of the accidents while operating mobile equipment, upon which Management relied in its list of "incidents." In fact, the last collision, and apparently the most serious one in the Company's judgment, had occurred three days before grievant's 1957 physical examination.
Grievant then continued to operate all mobile equipment as a Tractor Operator, and it was an event in January of 1958 which was not grievant's fault in any way, which finally led to Supervision's recognition that a problem existed. The solution to the problem was reached, however, by the Industrial Relations and Safety Departments' asking the Medical Department, which already had recommended that grievant not be hired at all and later that he not operate any mobile equipment, if there were not some pieces of such equipment that he might be allowed to operate. Moreover, the Medical Department then decided, in reversal of its two prior recommendations, that he could operate ordinary automobiles and in 1963 expanded the permissible equipment to the present "Approved" list.

If that were all there were to the case, the Union's conclusions might be inescapable. But there is more.

First, there can be no real doubt that grievant has a serious defect of vision, since that is shown, not only by findings of Company physicians, but also by those of two outside ophthalmologists, one of whom examined grievant at Dr. Clement's suggestion and the other of whom was chosen by grievant or the Union.

In December of 1962, Dr. G. B. Sharbaugh of Trenton, New Jersey, examined grievant and reported as follows:

"The above patient was examined by me on Dec. 14, 1962.

"Eye examination revealed vision of R20/20 and L20/70+ with correction. He could pick out some letters on the 20/40 line with his left eye but in an irregular fashion. The left eye is congenitally amblyopic but has remained the same. He has at least first degree fusion as shown by the Worth 4 dot test. He has enough depth perception to drive a shop vehicle in my opinion. Cranes or other high precision equipment of this type are excluded."
On October 28, 1964, grievant was examined at the Bristol Health Center at his or the Union's initiative, and the report, introduced by the Union, reads as follows:

"Patient was found to have ambleyolic left eye-vision 20/70 -- first degree depth perception was present. Testing devices must present target large enough for weaker of the two eyes to perceive. When these conditions exist stereopsis is present."

Those reports are consistent with the findings of the Fairless Medical Department regarding grievant's vision over the years through 1958, as well as with four later conclusions made after examinations from 1961 through 1964.

In light of all evidence, therefore, it is clear that grievant has a serious deficiency of depth perception, retaining only 20% of normal ("first degree fusion" and "first degree depth perception" meaning that the patient retains only the barest minimum or "first" of five degrees of depth perception), and Company physicians and an outside ophthalmologist agree that this requires that some restrictions be placed on the kinds of mobile equipment which he may operate.

It is unnecessary to decide whether the present "Approved" and "Not Approved" lists are the last word on the subject of what equipment grievant ever may be allowed to operate. They are not put forth as permanent clearances and prohibitions but are subject to change should grievant's vision, or the equipment change. It must be said, however, in light of grievant's proven deficiency in depth perception, that those lists have foundation in the evidence and represent reasonable categories respecting grievant's routine, day-to-day performance of the full scope of the driving and operating duties required of a Tractor Operator. In this regard it is noteworthy that grievant's three collisions and one improper operation of the mobile crane occurred while he was operating equipment now on the "Not Approved" list and that he drove equipment on the "Approved" list for five years without incident.
The Union urges that, aside from the results of increased age, grievant's sight is no worse now than when he began at Fairless in 1953. If this were not a problem of physical qualification, the inconsistent conduct of various elements of Supervision in the earlier stages of this problem might cast such doubt on its present position as to make it unreliable. That reasoning cannot apply, however, to a matter of such importance as the vision of a man working as a full-time Tractor Operator which requires operation of varied pieces of mobile equipment. It may have taken responsible elements of Management a surprisingly long time to come to a common recognition of this problem, but once they have done so and have shown that grievant's present vision is such that his operation of some of that equipment, as a Tractor Operator, would be unsafe, the fact that the decision should have been made sooner does not show that it now is wrong.

Thus, it must be concluded that Management's restricting grievant as a Tractor Operator to eight of the fifteen pieces of equipment is not in violation of the Agreement.

A different problem is encountered, however, upon turning to the temporary vacancy on the Mobile Equipment Repairman. Although the Company contends that an incumbent of that job is required to operate any of the various pieces of equipment which break down, either in road testing after repairs or in order to drive the equipment to or from the garage, the evidence shows a substantial distinction between the extent and kind of operation required of a full-time Tractor Operator and the driving demanded of a Mobile Equipment Repairman.

A Tractor Operator is required to drive all kinds of equipment with and without load, into and through all plant areas, including those which are congested by employees and equipment or both. Careful and precise maneuvering is required in many of those moves, and that is the kind of equipment operation which the Fairless Medical Department and the outside ophthalmologist have recommended against. Moreover, as Tractor Operator, grievant routinely would be required, not only to drive all equipment, but also to manipulate various attachments (crane boom and such) on the service equipment.
In sharp contrast, the driving which sometimes may be required of a Mobile Equipment Repairman is minimal in extent and substantially different in kind from the full-time operation of equipment routinely demanded of a Tractor Operator. That is, Company testimony shows that not all repairs require roadtesting, and some of that which is necessary, such as brake, clutch, and wheel alignment repairs, is done by the Tractor Operator then assigned to the equipment. Some repairs are made in the field and require no driving to the garage, and sometimes when the equipment must be brought to the garage, the Tractor Operator and not the Mobile Equipment Repairman, drives it there. Moreover, testing of repairs to auxiliary attachments would not be under actual, in-service conditions. Thus, a Mobile Equipment Repairman's typical driving would be to and from a parking area outside the garage and sometimes he might have to move equipment in the field to or from the garage. Finally, as to road-testing which the Mobile Equipment Repairman might have to perform, Company evidence concedes that it is not done in congested areas.

It seems clear, therefore, that the driving of the "Not Approved" equipment which grievant might be called upon to do as a Mobile Equipment Repairman would not subject him, other employees, or equipment to the substantial risks which Management justifiably seeks to avoid by prohibiting him from operating that equipment as a full-time Tractor Operator.

Of course, Management's belief that grievant cannot perform the Mobile Equipment Repairman job well does not stand in the way of his being given training on it under 13-F. Indeed, the Company recognized as much by granting the similar 1956 grievance and by stressing in this proceeding the medical problem of grievant's defective vision and not his past difficulties when assigned to that job.
AWARD

The grievance is denied to the extent that it was molded at the hearing to include a request that Management cease prohibiting grievant, as a Tractor Operator, from operating equipment on the "Not Approved" list.

The grievance is sustained to the extent that grievant was entitled to be assigned to the disputed temporary vacancy on the Mobile Equipment Repairman job, and grievant shall be made whole for loss of earnings accordingly.

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

Clare B. McDermott
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman