United States Steel Corporation Irvin Works Tin Mill Division and United Steelworkers of America Local Union 2227

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BOARD OF ARBITRATION

Case USC-1471

March 2, 1965

SUPPLEMENTAL OPINION AND AWARD

UNITED STATES STEEL CORPORATION
Irvin Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 2227

Grievance No. A-61-165

Subject: Incentive Administration.

Statement of the Grievance:
"The undersigned employees request that Revision #1-Incentive Application #630 be revised to provide fair and equitable incentive earnings. Adjustment of earnings to be retroactive.

"Violation: Section 9.
"Also the Incentive Plans be complete as to speeds and descriptions as in the past."

This grievance was filed in the First Step of the grievance procedure July 28, 1961.

Statement of the Award: The grievance is sustained to the extent that the disputed incentive failed to meet the earnings protection requirements of Section 9-C-4 by 8%. Grievants are entitled to be made whole for loss of earnings retroactively on the basis that the average Index of Measured Performance should have been 8% higher than actually yielded. In addition, the disputed incentive shall be modified to provide an 8% greater earnings opportunity (IMP) for the future.
SUPPLEMENTAL OPINION AND AWARD

BACKGROUND Case USC-1471

This case from the Tin Finishing Department of Irvin Works, originally presented issues under Sections 9-C-2, 9-C-3, and 9-C-4 of the January 4, 1960 Agreement in respect to Revision No. 1 to Incentive Application No. 630, covering operation of the No. 2 Electrolytic Tinning Line.

On June 11, 1963 the Board issued its Award, as follows:

"The grievance is sustained only to the extent that the employees should receive earnings based on reference period averages, as though the interim period had extended up to January 21, 1962. The 9-C-3-d and 9-C-4 issues as to the revised standards after that date are returned to the parties for settlement in light of this Opinion."

No. 2 Electrolytic Tinning Line employees had enjoyed incentive coverage for many years prior to a shutdown for major improvements on August 3, 1960. Management expected the improvements to increase the Line's rated maximum speed from 665 feet per minute to 950 feet per minute. The changes included installation of new drive motors and gear reductions on the uncoilers; conversion from idler rolls to motor-driven rolls in the pickling and plating sections; and installation of new conveyors, classifiers, and pilers; and increased melting capacity (by replacing existing 500 KVA transformers with 750 KVA fan-cooled transformers). In addition, the 18" x 43½" shear on the No. 2 Line was to be replaced by a 20" x 46" shear from the No. 1 Electrolytic Tinning Line.
Operation of No. 2 Line was resumed November 2, 1960, and thereafter the employees were paid special hourly interim allowances under Section 9-C-2-b, up to installation of Revision No. 1 on June 11, 1961.

Revision No. 1 established Standard Time Values in terms of earned standard hours per 1000 linear feet of various types of product processed, per coil charged, per length change, and per operating hour on measured work. In addition, a "prime pack factor" was set forth, contemplating a per percentage point increase or decrease in earnings based on the amount of product produced suitable for packaging without further processing.

The new standards were installed without time study, in the belief that bottleneck speeds for the various products could be determined solely by engineering calculations.

During the reference period (prior to August 3, 1960) the employees averaged over 150% earnings. During the first eight pay periods under Revision No. 1 the Index of Measured Performance averaged only 122%.

The present grievance was filed July 28, 1961. On October 11, 1961, Management asserted in Step 3 that it had not yet had sufficient experience under normal operating conditions to make a final determination as to equity of the revised incentive. The Company noted that it had been necessary to make many mechanical alterations to the Line, and that operations had been abnormal because of limited orders, and suggested that the grievance be held pending for an additional 30 days so that it would be in a better position to make a final determination as to equity of the incentive. It was agreed at this time that there had been no lack of effort by the employees.
On December 6, 1961, it was agreed in 4th Step to re-mand the grievance to the plant for further consideration. When the parties later failed to reach agreement, Management installed Change No. 1 to Revision No. 1 effective January 21, 1962, with retroactive application to June 11, 1961. This had the effect of increasing the Index of Measured Performance by approximately 6%.

While the evidence before the Board at the first hearing was reasonably adequate to warrant final disposition of the Section 9-C-4 issue from the date of installation of Revision No. 1 up to January 21, 1962, the evidence did not suffice to permit a final conclusion as to issues under Section 9-C-3-d and 9-C-4 for the period subsequent to January 21, 1962. As to these issues, the Board Opinion included the following:

"Apparently the information presented at the hearing had not been reviewed in any detail in the grievance procedure, prior to the hearing. And the parties' basic approaches to the case were so widely apart that they understandably did not focus on hard problems of detail even at the hearing. Finally, there may have been some misconception as to certain problems which should be clarified now so that the parties may settle this case on a realistic basis without further undue expenditure of effort.

"Thus, it should be made clear once more that Section 9-C-4 does not guarantee any fixed level of incentive earnings. If changing business conditions account for some, most, or all, of the decrease in earnings in comparison with the reference period, nothing in Section 9-C-4 can protect earnings against such fluctuations. On the other hand, the bare fact that
production dropped as earnings dropped does not establish that production dropped because of any lack of employee effort, or solely because of adverse business conditions. It is probable that production dropped up to January 21, 1962, for example, in good part because of the substantial mechanical difficulties encountered with the new equipment.

"It should be noted also that estimated line speeds for some products still had not been attained by hearing time. This seemingly was true at least as to shear bottleneck and maximum line speed bottleneck product. At first blush one might well infer that standards based on maximum speeds never attained over 16 months are not realistic. But here the point must be made that the Board is concerned with the total incentive, and not with individual standards thereunder. For practical reasons with which the parties are well familiar, the Board long has dealt with issues under Section 9-C-3-d on the basis of overall earnings experience under the incentive. Some standards may be tight and others loose, in the total incentive, and the Board takes it as a whole. This situation, therefore, must be distinguished sharply from some problems which may arise under Section 9-F-2 involving only portions of the standards in an adjusted incentive.

"It perhaps should be said further that the mere regrouping of product (as heavy coated product in this instance) for purposes of increasing or reducing the number of standards
5. USC-1471

applicable is not improper when one incentive is replaced by another under Section 9-C-2. Management in such a situation is entitled to seek either greater precision of incentive application, or administrative simplicity, as the case may be. It is only the end result which concerns the Board: whether earnings opportunity under the entire incentive as a whole has been affected adversely by the changed technique. The same should be said also with respect to the prime pack factor, to eliminate further misunderstanding on this point.

"The issues under Section 9-C-3-d and 9-C-4 which remain after January 21, 1962 thus will be returned to the parties for the detailed review which is essential to their proper understanding and realistic settlement. If the parties find themselves unable to agree, of course, the Board procedures remain available."

After receiving the June 11, 1963 Award, the parties met locally a number of times to resolve the problems which had been left open by the June 11, 1963 Award. Since they failed to agree, the issue was returned to the Board for further hearing and final decision.

During their settlement discussions the local parties considered a proposed new incentive which Management developed as a possible step to comply with the Award, and to solve specific problems which the Union had stressed as impeding the
achievement of better earnings levels. Various offers were made as to possible installation of the proposed new standards, with the Union ultimately requesting two final significant modifications. Apparently, at this juncture the parties were unable to agree because of a continuing fundamental disagreement as to proper application of Section 9-C-4 to the complicated facts presented in the case. This disagreement apparently underlay the Union's decision that it could not accept the proposed new standards as a full and final settlement of the case (without further recourse to the grievance procedure).

At the hearing the Union suggested that the Company had been arbitrary in advancing a final offer of settlement, by insisting that installation of the proposed new standards (with revisions requested by the Union) be conditioned upon Union agreement that such installation (with retroactive application) settle the case finally.

FINDINGS

The Board will not review the parties' negotiations in an effort to decide which party, if either, was more responsible for the unfortunate failure to agree upon a practical settlement after the first Award in this case. Such a review would not be very helpful in settling the hard problem of applying Section 9-C-4 reasonably to the present facts. In deciding cases, moreover, the Board does not give weight to offers of settlement made between the parties. To do so would tend to undermine the essential freedom which the parties must have to negotiate effectively in the grievance procedure. This policy was made clear by the Board years ago in Cases G-60, -61, as follows:
"This conclusion is required despite the fact that the Company offered to loosen the incentive slightly in the grievance procedure in an effort to settle this case. The Union urges that - at the least - such an offer must be regarded as an admission that the incentive did not provide equitable incentive compensation, thereby entitling grievants to a retroactive adjustment. The Board cannot accept this rationale. To do so would be to prejudice the fundamental interest of both parties in effective operation of the grievance procedure without excessive resort to arbitration - it would, in short, undercut effectiveness of the parties' representatives striving for compromise in the grievance procedure. These men must enjoy full freedom to advance whatever propositions seem calculated to induce practical settlement without fear that thereby they prejudice their position should the case later reach the Board. In evaluating the present evidence, therefore, the Board has given no weight to offers of settlement in the grievance procedure."

It should be equally clear, however, that the Board will not pass upon the Company's proposed revision of the disputed incentive to decide whether the proposed revision appears to meet the requirements of Section 9-C-4. The proposed revision never has been placed in effect and the Board cannot pass upon difficult issues of compliance with Section 9-C-4 without substantial earnings experience based upon actual application of the given replacement incentive. While the Company urges that in Case USC-1153 the Board actually did approve a proposed incentive, as constituting compliance with an earlier Award, that
case did not involve a replacement incentive under 9-C-4, but only an adjustment to meet a changed condition which was not of sufficient magnitude to require a replacement incentive. The facts in that case, moreover, were sufficiently unique to limit substantially its useful scope as a precedent.

Turning to the merits, this case now does not present any issue of equitable incentive compensation under Section 9-C-3-d which might produce an Award providing any greater earnings opportunity for grievants than already might be assured them under the provisions of Section 9-C-4. It thus is necessary now to grapple only with the Section 9-C-4 aspect of the case.

Since the second Award in Case USC-719 (March 23, 1961) it has been clear that issues of preservation of incentive earnings opportunity under Section 9-C-4 will be handled on a case-by-case basis, just as issues of equitable incentive compensation have been handled since 1952. Each actual decision, therefore, embodies only an application of Section 9-C-4 to the specific facts in the given case and does not constitute a precedent for any subsequent case.

Nonetheless, there are a few general observations about Section 9-C-4 which may bear repeating here in order to avoid unnecessary confusion. Thus, where changing business conditions are responsible for decreased incentive earnings (when compared with the reference period), Section 9-C-4 is not intended to protect against such fluctuations. The language in 9-C-4 makes plain also that the earnings protection contemplated is conditioned upon maintaining the average performance level of the reference period. Employees who do not respond to a replacement incentive in the same manner as indicated by their performance during the reference period cannot insist that Section 9-C-4 nonetheless guarantees them the same incentive earnings level as before. But the mere fact that production is lower under a replacement incentive, compared with the reference period, does not establish a lack of employee performance when the production drop is attributable to factors beyond the employees' control.
Moreover, where earnings under a replacement incentive over a representative period are well below reference period earnings, and Management claims this to be the result of lower employee performance, it must produce persuasive evidence to demonstrate that such is the case.

During the 9-C-4 reference period grievants achieved an average Index of Measured Performance of 154% under the replaced incentive. The Company stressed at the first hearing that this was appreciably higher than in the previous five years, when the IMP averaged as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>IMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1955</td>
<td>145</td>
</tr>
<tr>
<td>1956</td>
<td>145</td>
</tr>
<tr>
<td>1957</td>
<td>142</td>
</tr>
<tr>
<td>1958</td>
<td>144</td>
</tr>
<tr>
<td>1959</td>
<td>139</td>
</tr>
</tbody>
</table>

Company Exhibit 6 indicates that from February 9, 1958 to May 15, 1960, the average Index of Measured Performance on the No. 2 Line ran about 143%, while the average Index of Measured Performance on No. 3 Line was close to 149%. From May 15 through August 6, 1960 (the reference period for No. 2 Line) the Index of Measured Performance on No. 3 Line averaged around 159% as against 154% on No. 2 Line. Within a few pay periods thereafter, earnings on No. 3 Line dropped off as business conditions became less favorable, and did not reach such favorable levels again until a brief period commencing in the Spring of 1961.

During a period of 8 months, commencing late in January of 1962, the average Index of Measured Performance on No. 2 Line ran around 121% compared with about 134% on the No. 3 Line. At the first hearing the Company emphasized a table showing Production Per Turn (in terms of Base Boxes) for various periods, as follows:
In its June 11, 1963 Opinion, the Board noted that the bare fact that earnings and production both are down under a replacement incentive does not necessarily establish that production dropped because of lack of employee performance (in whole or in part) or because of adverse business conditions. After the second hearing the Board requested more current earnings data, which indicated that from late May through December 5, 1964, the average Index of Measured Performance on the No. 2 Line ran close to 135%, with an average Index of Pay Performance at about 133%.

The following comparative earnings data also was provided, at the Board's request, for 8 recent pay periods in which both No. 2 and No. 3 Lines operated:

<table>
<thead>
<tr>
<th>Pay Period Ending</th>
<th>Index of Measured Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. 2 Line</td>
</tr>
<tr>
<td>6-6-64</td>
<td>127</td>
</tr>
<tr>
<td>6-20-64</td>
<td>142</td>
</tr>
<tr>
<td>7-4-64</td>
<td>136</td>
</tr>
<tr>
<td>7-18-64</td>
<td>129</td>
</tr>
<tr>
<td>8-1-64</td>
<td>133</td>
</tr>
<tr>
<td>11-7-64</td>
<td>140</td>
</tr>
<tr>
<td>11-21-64</td>
<td>133</td>
</tr>
<tr>
<td>12-5-64</td>
<td>126</td>
</tr>
</tbody>
</table>
NOTE: No. 3 Line did not operate between the pay period ending August 29 and that ending November 7, 1964. No. 2 Line operated only .9 of a turn in the pay period ending August 15, 1964; this period is omitted from the above table as unrepresentative.

The generally favorable market conditions and high operating levels which prevailed in the latter half of 1964 were not unlike the conditions which prevailed in the first half of 1960 and which continued through the reference period. There is, nonetheless, obvious difficulty in evaluating the relative performance on the No. 2 Line in the two periods, as well as the impact of relevant changes in customer requirements.

It is an interesting circumstance that average delay time was running at about 15% at the time of the second hearing, compared with an average of about 4% during the reference period. Neither party seemed prepared to demonstrate by systematic analysis that--to any significant and measurable extent--the volume of such delays was the result either (1) of poorer employee performance, or (2) of unsolved operating problems stemming from the equipment changes made in 1960. Because of the switch to greater use of coiled product in recent years, however, "odd" orders for sheets now tend to be for much smaller quantities and thus tend to reduce earnings. Tighter quality standards established by customers also have had an impact, in uncertain amount. Finally, some of the problems stressed by the Union as tending to interfere with the achievement of higher earnings have not been entirely remedied, in part because of the parties' inability to agree locally upon a satisfactory basis for installing the Company's proposed new standards, which were developed in an effort to comply with the first Award in this case.
These various items are recited only to suggest some of the many relevant considerations before the Board which make a mathematical determination of compliance with Section 9-C-4 impossible. The final decision here thus rests on all of the evidence presented at both hearings, a good portion of which was summarized in the Board's June 11, 1963 Opinion and not repeated here.

On the basis of the entire record, therefore, the Board finds that for the period commencing January 21, 1962 the disputed incentive failed to meet the earnings protection requirements of Section 9-C-4 by 8% in terms of Index of Measured Performance. Grievants are entitled to retroactive payments accordingly.

AWARD

The grievance is sustained to the extent that the disputed incentive failed to meet the earnings protection requirements of Section 9-C-4 by 8%. Grievants are entitled to be made whole for loss of earnings retroactively on the basis that the average Index of Measured Performance should have been 8% higher than actually yielded. In addition, the disputed incentive shall be modified to provide an 8% greater earnings opportunity (IMP) for the future.

BOARD OF ARBITRATION

Sylvester Garrett, Chairman