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United States Steel Corporation Heavy Products Operations Edgar Thomson Works and United Steelworkers of America Local Union 1219

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BOARD OF ARBITRATION

Case No. USC-1897

March 5, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Edgar Thomson Works

and

Grievance No. A-63-88

UNITED STEELWORKERS OF AMERICA
Local Union No. 1219

Subject: Contracting Out.

Statement of the Grievance: "We request that Management make us whole for any wages lost as a result of Management's action of having outside bricklayers perform brick work on the extended portion of the stack of No. 1 Blast Furnace.

"Facts: Work is of a nature inherent to the job of bricklayer grievants who are laid off because of lack of work. Seniority rights of grievants are being violated when while laid off for lack of work, other bricklayers with no seniority rights are hired to perform work of bricklaying. Employees are available who are able and qualified to perform this work in an efficient manner."
"Remedy Requested: That Management make the grievants whole for any wages lost as a result of this work being performed by people having no rights to such work. Further that on future jobs Management utilize the proper people when they are available for such work."

This grievance was filed in the Second Step of the grievance procedure November 29, 1963.


Statement of the Award: The grievance is denied.
BACKGROUND Case No. USC-1897

This grievance from the Masonry Department of Edgar Thomson Works claims that Management's use of an outside contractor on the masonry work connected with extension of No. 1 Blast Furnace Stack was in violation of Section 13-A and Section A - Contracting Out - of the Experimental Agreement (Appendix C) of the April 6, 1962 Agreement, as amended June 29, 1963.

In mid-Summer of 1963, Edgar Thomson Management began planning a rebuild of No. 1 Blast Furnace and its auxiliary facilities. The only phase of that project that is directly involved here, however, is the masonry work associated with extension of the stove stack by 50 feet, which brought it to a height of 225 feet.

When the disputed work was done, some Edgar Thomson Bricklayers were laid off, and some were working as Bricklayer Helpers.

Management estimated that the entire rebuild of No. 1 Furnace would take about nine months and would cost nearly $5,000,000. The Company says that over 90% of the work was done by Edgar Thomson employees and that Edgar Thomson Bricklayers performed about 99% of the required masonry work.

Management says that several major reasons led to its decision to contract out this stack work. First, although some patch work in stacks had been done in earlier years by plant forces, Management claims that substantial lining and relining of stacks at Edgar Thomson traditionally has been contracted out and that plant forces have done no stack masonry work of any kind since 1957.

Second, it is said that working at heights of 175 to 225 feet involves special safety hazards to which plant Bricklayers are not accustomed and, therefore, they could have done this work only after erection of a much more elaborate scaffolding system than that used by the outside contractor, and that erection of that scaffolding would have inflated the required man hours by the services of Carpenters, Boilermakers and Welders, in addition to the actual construction time of Bricklayers.
Third, it is claimed that supervisory personnel experienced in major stack relining were assigned to Edgar Thomson forces on brickwork in the furnace and stoves and thus were not available in late November for supervision of this work. It is argued, moreover, that Boilermakers were not available at that time for assignment to the scaffolding work which would have been required if Edgar Thomson Bricklayers had done this work.

The Company does not question the ability of Edgar Thomson Bricklayers to handle this kind of masonry work, but it does assert that the heights involved here would have demanded such care in erection of elaborate scaffolding, if the work had been done by plant employees, as to inflate the man hours required to a point substantially over the man-hour estimate of the outside contractor. Specifically, Management estimated that plant employees (counting Bricklayer and Bricklayer Helper hours on the masonry work itself, plus the Carpenter, Boilermaker, and Welder hours on scaffold erection at each successive level of the work face) would require about 1400 hours to complete the task, as opposed to the 400 hours estimated by the contractor.

The scaffolding actually used by the contractor was a platform of 2 x 12 planking bolted across 4 x 4 timbers, which were bolted to bent angles inserted between brick courses. The platform had a hole in the center, which always remained open, to allow for hoisting materials to it. Each time the scaffolding was raised to the next level, a man stood on one of the planks to pass up material to the higher level. Moreover, the contractor's employees apparently rode the hook on the hoist cable up and down inside the stack, which would not have been permitted by Management's safety rule for plant employees.

The Company does not say that the contractor's scaffold was necessarily unsafe for its employees, in light of their experience on high stack work, but it does insist that the contractor's less rigid scaffold, with an open hole in the middle, and which required a man to stand on a plank to raise the scaffold level, would have been prohibited for plant employees because unsafe for them in light of their lesser experience at such heights.
The scaffolding arrangement which Management would have used would have involved lowering a Welder from the top of the stack in an enclosed basket attached to the hoist cable in order to weld angles to the stack skin; welding cross angles to these, and laying planking on the angles, with a flop gate over the hole in the center, which would be closed when not hoisting materials. Each time the scaffold would be raised, the above process would have been repeated, after burning off the old supporting angles flush with the brick lining, except that a ladder would have been built down inside the stack to enable Bricklayers to get down to the scaffold and to move from one scaffold level to the next.

The Introduction and Section A of the Experimental Agreement read as follows:

"The following provisions set out below shall be effective for the period August 1, 1963 through December 31, 1964, for experimental purposes.

A. CONTRACTING OUT

The parties have existing rights and obligations with respect to various types of contracting out. In addition, the following supplements protections for bargaining unit employees or affirms existing management rights, whichever the case may be, as to those types of contracting out specified below:

1. (a) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees in the bargaining unit shall not be contracted out for performance within the plant, unless otherwise mutually agreed pursuant to paragraph 4.
4.

(b) If production, service, and day-to-day maintenance and repair work has in the past been performed within a plant under some circumstances by employees in the bargaining unit and under some circumstances by employees of contractors, or both, such practice shall remain in effect with respect to such work performed within the plant, unless otherwise mutually agreed pursuant to paragraph 4.

(c) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees of contractors may continue to be contracted out, unless otherwise mutually agreed pursuant to paragraph 4.

2. Maintenance and repair work performed within the plant, other than that described in paragraph 1, and installation, replacement and reconstruction of equipment and productive facilities, other than that described in paragraph 3, may not be contracted out for performance within the plant unless contracting out under the circumstances existing as of the time the decision to contract out was made can be demonstrated by the Company to have been the more reasonable course than doing the work with bargaining unit employees, taking into consideration the significant factors which are relevant. Whether the decision was made at the particular time to avoid the obligations of this paragraph may be a relevant factor for consideration.

3. New construction including major installation, major replacement and major reconstruction of equipment and productive facilities at any
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plant may be contracted out, subject to any rights and obligations of the parties which, as of the beginning of the period specified above, are applicable at that plant.

4. (a) At each plant a regularly constituted committee consisting of not more than four persons (except that the committee may be enlarged to six persons by local agreement), half of whom shall be members of the bargaining unit and designated by the Union in writing to the Plant management and the other half designated in writing to the Union by the Plant management, shall attempt to resolve problems in connection with the operation, application and administration of the foregoing provisions.

(b) In addition to the requirements of paragraph 5 below, such committee may discuss any other current problems with respect to contracting out brought to the attention of the committee.

5. The Union committee members will be given notice by the Company members, when the Company believes it should have significant items of work performed in the plant by outside contractors. Should the Union committee members believe discussion to be necessary, they shall so request the Company members in writing within three days (excluding Saturdays, Sundays, and Holidays) after receipt of such notice and such a discussion shall be held within three days (excluding Saturdays, Sundays, and Holidays) thereafter. Should the committee resolve the matter, such resolution shall be final and binding.
Should a discussion be held and the matter not be resolved or in the event a discussion is not held, then within thirty days from the date of the Company's notice a grievance relating to such matter may be filed under the grievance and arbitration procedure. Should the Company committee members fail to give notice as provided above, then not later than thirty days from the date of the commencement of the work a grievance relating to such matter may be filed under the grievance and arbitration procedure.

6. Any grievance relating to contracting out which occurs after June 20, 1963, and prior to August 1, 1963, shall be subject to the provisions of paragraphs 1 and 2 above.

FINDINGS

The Company at the outset has raised and pressed vigorously a substantial question as to the timeliness of this grievance under the 30-day limit of Section A-5 of the Experimental Agreement. No useful purpose would be served, however, in setting out the rather extensive details which would be necessary in order to pose and then resolve that question. Thus, it will be assumed, but not so decided, that the grievance is timely, and it will be decided on its merits.

If Management's decision to contract out this work was proper under the Experimental Agreement, there would be no violation of grievants' seniority rights, as alleged in the grievance proceedings and Union brief. Thus, the balance of this Opinion will focus on Section A of the Experimental Agreement rather than Section 13 of the Basic Agreement.
The parties agree that the disputed work does not fall under any of the three subdivisions of Section A-1 of the Experimental Agreement, that is, that this work was not "Production, service, and day-to-day maintenance and repair work...." They do not agree, however, as to whether the work in question is covered by Section A-2 or -3.

Management believes that the case is governed by Section A-3, urging that this was a rebuild of a blast furnace, which it says is a major facility, and that extension of the stack by 50 feet and lining the extension with brick was "New construction...," within the language of that Section of the Experimental Agreement. Since the disputed work falls under Section A-3, the argument is that it "...may be contracted out, subject to any rights and obligations of the parties which, as of the beginning of the period specified above, are applicable at that plant." The Company says that the concluding words of Section A-3 mean that Management may contract out work there described unless there is a practice or special agreement at that plant requiring that it be assigned to bargaining unit employees.

Although insisting that this question is governed by Section A-3 of the Experimental Agreement, Management contends in the alternative that it should prevail even if Section A-2 should be found to be controlling, the argument being that the evidence demonstrates that contracting out of this work was the more reasonable course in light of the significant factors which are relevant.

The Union argument begins with quotation of the Introductory clause (Paragraph C-2) of Section A of the Experimental Agreement, as follows:

"The parties have existing rights and obligations with respect to various types of contracting out. In addition, the following supplements protections for bargaining unit employees or affirms existing management rights, whichever the case may be, as to those types of contracting out specified below." (Emphasis added.)
It is said that that language increased (supplemented) protections of bargaining unit employees, under the Experimental Agreement, but merely froze (affirmed) existing Management rights. The Company does not disagree with that general conclusion but contends that the supplemented protections of bargaining unit employees are evidenced specifically only in Section A-2, which it feels is not pertinent here, where Management now has the burden of demonstrating that contracting out was the more reasonable course, whereas before the Experimental Agreement, it is said that it was the Union's burden to show that contracting out was an unreasonable exercise of Management judgment.

The Union does not say whether Section A-2 or A-3 is the controlling Section here, arguing that decision must be in its favor no matter which Section should apply. The contention is that, whatever distinctions ultimately may be drawn as to the kind of work covered by A-2 and A-3, there are no factors in the present record which would be relevant under A-2 and not under A-3, and vice versa.

In short, the Union feels that the evidence establishes existence of a practice regarding this kind of work running in its favor and, moreover, that the Company has not demonstrated that its decision to contract out this work was the more reasonable course in light of the significant factors which are relevant.

In the grievance proceedings the only Union assertion even remotely related to practice was the Grievance Committee-man's statement that some laid-off Bricklayers had had some experience in high stack work. At the hearing he said that the practice had been to the effect that when Masonry employees were available and not working, they performed this kind of work, whereas if all Masonry employees were working, outside contractors handled such work.

There was remarkably little supporting evidence for that assertion. The only specific incident referred to was work on the bleeder stack in January of 1957, said to have been handled by Edgar Thomson Bricklayers, including the witness.
This involved relining the top section of the stack, said to have been about 230 feet high. The men climbed up the ladder attached to the outside of the stack and down a ladder to the scaffold, made of planks resting on 4 x 4 timbers, which in turn rested on the brickwork. The task allegedly took about a week or so, with two or three Bricklayers in the stack and several Helpers getting material to them.

The Grievance Committeeman said also that before 1957 Edgar Thomson Bricklayers handled stack inspection (along with Supervisors) and repairs, in the sense of patching, but since that time there had not been much stack work done. With further regard to stack inspection and repairs, the witness said that Edgar Thomson Bricklayers had done such work on the Foundry stack, Open Hearth stacks, Soaking Pit stacks, and Blacksmith Shop stacks. Company evidence confirmed this as to repair of Open Hearth stacks, in that it agreed that in 1954 or 1955 patch jobs were done by Edgar Thomson Bricklayers involving about ten or twelve square feet of brickwork.

Company Exhibit 5 is a list of masonry inspection and repair jobs in stacks at Edgar Thomson back to October of 1957 and shows (excluding two Gunite jobs) six instances in that period by outside contractors, three of them by the contractor used here. The earliest instance in that list, October of 1957, was the only stack work by plant employees in the six years preceding this dispute, but it involved the base of the stack and not high work.

Moreover, Management's investigation of new stack work or complete relining went back to 1942 and found none performed by Edgar Thomson forces in that 21-year period. On the contrary, all nine in that period were handled by outside contractors, three in 1942, four in 1946, one in 1959, and one in 1961.

Hence, in light of all evidence on the point, it would be difficult to find existence of a practice requiring that this kind of masonry stack work be assigned to plant forces.
In the Board's judgment, it is unnecessary to decide whether the disputed work involved "installation...and reconstruction" under Section A-2 of the Experimental Agreement or was "New construction" under A-3, since the evidence requires that the grievance be denied under either Section. This is for the reason that, although the burden of proof may differ under the two provisions, the question in either instance is to be resolved by analysis of considerations developed in numerous Board Awards over the years preceding the Experimental Agreement. That is, the "significant factors which are relevant" in A-2 and the "rights and obligations of the parties" in A-3 apparently refer to doctrines stated in previous Board Awards construing prior Basic Agreements.

One such significant and relevant factor, as well as a right and correlative obligation of the parties applicable as of August 1, 1963, was the necessity to assign work in the plant according to prevailing practices governing its performance. Here, however, there is no practice running in the Union's favor regarding this kind of work.

Another of the "significant factors which are relevant" and one of the "rights and obligations of the parties" was the necessity to follow the direction of Board Awards, arising from Section 2-A, that Management's decision to contract out work must not be an arbitrary or unreasonable restriction of the scope of the bargaining unit or, stated simply, must be a normal and reasonable exercise of business judgment in light of all relevant considerations.

Analysis of the evidence in light of that standard shows no violation either of Section A-2 or A-3.

This was a one-shot effort involving the initial lining of the extended fifty feet of this stack. The evidence shows that this specific kind of work never had been done by plant forces over a 21-year period prior to this grievance. On the contrary, the nine instances of new stack work or complete relining all were handled by outside contractors over those years. This was, moreover, high stack work, giving rise
to problems of safety and experience not encountered on ground-level work. Finally, the heights involved caused Management to conclude that special scaffolding techniques would have to be employed if plant forces, less experienced at high work than the contractor's employees, had been assigned. This, in turn, would have inflated the man hours required to a point substantially over those estimated and actually employed by the contractor.

In view of those considerations, no violation of Sections A-2 or A-3 of the Experimental Agreement appears and, accordingly, the grievance must be denied.

AWARD

The grievance is denied.

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