8-3-1964

United States Steel Corporation American Steel and Wire Division Worcester Works and United Steelworkers of America Local Union 1885

Sylvester Garrett

BOARD OF ARBITRATION

Case Nos. A-1023
A-1024

August 3, 1964

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
AMERICAN STEEL & WIRE DIVISION
Worcester Works

and

Grievance Nos. WS-2559;
WS-2599

UNITED STEELWORKERS OF AMERICA
Local Union No. 1885

Subject: Seniority - Filling of Vacancies

Statement of the Grievances: Grievance WS-2559 (A-1023)

"The Union contends that Management is violating Section #2 and 13 of the 1962 Agreement, by not allowing me to displace a lesser service employee on a job which I have done, and also ask for loss of earnings because of this condition."

This grievance was filed in the First Step of the grievance procedure October 3, 1962.

Grievance WS-2599 (A-1024)

"Management is violating Section 2B and 13F of the 1962 Agreement by placing a junior man on the Hooker job in the Rod Storage, of which I had requested and worked on the job. I also ask for all loss of earnings because of this violation."

This grievance was filed in the First Step of the grievance procedure January 14, 1963.

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

Statement of the Award: The grievances are denied.

BACKGROUND AND DISCUSSION

Cases A-1023 & A-1024

These two cases from Worcester Works involve different grievants and slightly different fact situations but they have similar backgrounds and were heard, in stages, at the same hearing. 1

A-1023 alleges violation of Sections 2 and 13. Grievant Yost, a regular operator at the Oil Tempering Furnace Cold Roll, objects to the Company's failure to place him on the Oil Tempering Furnace Operator (Curtain Spring), Class 12 job in August, 1962 as a violation of his seniority rights since junior men were worked on the job while he, Yost, was working as a Class 4 Utilityman (Distributor), having been reduced from his regular job. Yost, the Union says, had worked as an Oil Tempering Furnace Operator (Curtain Spring) in the past and possessed all three Section 13-A-1 requirements. 2

A-1024 was filed by employee Shannon and grieves Management's failure to assign him to a Hooker (Rods), Class 5 job in Rod Storage on January 7, 1963, when a junior employee was assigned to the job. This violated the clear intent and language of Section 13-F, since the grievant possessed greater continuous service and had ability to perform the job. 3

Physical fitness is not at issue in either case. 4

The Company regards its failure to assign employees Yost and Shannon to the jobs in question as necessarily resulting from application of a claimed August 1949 Agreement entered into locally by the parties as an implementation and refinement of Section 13-H. Since the question of the scope and validity of this "agreement" is of prime importance to this case, it is quoted below. 5

> "The Union proposed that the employees now laid off their jobs be recalled in line with their service on the jobs from which they were laid off, and that these jobs are not to be declared open jobs and therefore will not be declared job openings for posting.

"Decision:

It was agreed by Union and Management that Management would administer the provisions of Section 13 of the 4-22-47 Agreement, and in conformance with the local Seniority Agreement will recall employes laid off in conformance with their seniority.

Furthermore that such jobs will not be considered open jobs and posted."

The Union feels that this agreement, as indicated by the Chairman in Case N-231, must fall before the clear language of Section 2-B-2 and cannot be permitted to deprive employees of Basic Agreement rights. 6

The Company explains that the 1949 Local Agreement was the background and base from which an "incumbency concept" developed. This concept required that the Company not post job openings when incumbents were available for recall. There are two methods for obtaining incumbency: - (1) An employee may promote to a job through job postings and thus become an incumbent on the posted job. (2) At the moment of a decrease in force an employee uses his seniority to displace another employee, thereby becoming an incumbent on the job. Incumbency rights may be lost by (1) bidding off and promoting onto another job and (2) by refusing a recall to a job opening on which the employee has incumbency rights. 7

The Company notes that a senior employee always has the right, whether regarded as an incumbent or non-incumbent, to fill a vacancy, temporary or permanent, when he is actually on layoff "out the gate." An employee who is working on a lower-rated job than his regular job, and who does not possess incumbency rights to the vacant job, may not fill such a vacancy. 8

Since neither Section 13-F nor 13-H defines the meaning of "vacancy," the net effect of the 1949 Agreement was to offer available jobs to "incumbents" prior to posting--thus to defer or avoid the exercise of seniority rights. 9

The Union contends that an employee laid off from the plant retains greater seniority to displace an employee in the plant than a man who is required by the Company to work a lower job. Avoidance of posting deprives a working senior employee of rights to bid for higher class jobs. 10

The Union refers to past instances involving employees Glatki, Stamper, Markunus, and Bousquet as having been settled by permitting these more senior men to fill, on request by them, jobs occupied by less senior incumbents. Thus there has not been strict adherence to the incumbency concept over the years--even according to the Company's definition of the concept. 11

The Union maintains that grievants Yost and Shannon had worked the jobs they now desire on several occasions in the past and that, therefore, they are former incumbents. The Company says that its records do not reflect past assignments of Yost to the Oil Tempering Operator (Curtain Spring) job or of Shannon to the Hooker (Rods) job. Both parties agree, however, that the grievants possess the abilities to perform the jobs they desire. The parties further agree that in recent years there has been a greater likelihood of a senior employee being assigned to a lower-rated job in a force reduction than to go out the gate on layoff, and this has generated irritation among senior employees when they observe junior employees working on higher-rated jobs. This last consideration, among others, resulted in current discussions looking toward a new local seniority agreement. 12

Superintendent of Industrial Relations Miller and General Foremen of the Wire Mill Westhaver and Walker testified that it is a consistently followed practice to fill permanent or temporary vacancies with employees who have incumbency rights to the vacant jobs so long as such incumbents will accept the assignments and so long as a senior employee is not on layoff from the plant. Jobs are posted after incumbents refuse assignments. Moreover, vacancies are filled by senior employees at the moment of their reduction from their regular jobs in a reduction in force. Therefore, a senior employee does possess a right, whether an incumbent or not, to fill a vacancy when laid off from his regular job but may not, 13

if a non-incumbent of the vacant job, exercise his seniority thereafter, absent postings, regardless of whether he is working on a lower-rated job than the vacant one. The Company emphasized the point that a senior employee may exercise his right to fill a vacancy at the precise moment when he is on the way down from his regular job.

Supervisors, asserts the Company, maintain seniority and incumbency lists. When a vacancy occurs the Supervisor and the Grievance Committeeman or his assistant check the list and mutually agree on the senior incumbents to be called. General Foreman Walker states that this occurs "perhaps a dozen times a month" and has been the practice for many years. 14

Addressing its attention to the instances cited by the Union when the incumbency concept allegedly was not followed, the Company states that Glatki, in 1962, "bumped" onto another job at the time he was displaced from his own job, using all three factors of ability, physical fitness and continuous service. This was clearly permissible under the local agreement. Markunus and Bousquet were in fact given jobs on which they were non-incumbents because both were on layoff from the plant, thereby coming within the previously mentioned exception. The Company is without knowledge of the Stamper case. 15

FINDINGS

The local agreement in 1949 does not control here, since in effect it seems to have been a "one shot" proposition, addressed to a specific problem which the parties then faced. It was followed, however, by a developing practice, which took clear form over the years up to the time of these grievances. Under this clear practice, openings on jobs which occurred after force reductions normally were filled by recalling or reassigning demoted or laid off incumbents of such jobs, until all such incumbents (who desired such recall or reassignment) had been returned to the job. Only thereafter were vacancies posted so that non-incumbents of such 16

jobs could exercise their seniority rights so as to become incumbents. Once an employee becomes an incumbent, he does not lose his incumbency status as to that job (after demotion or layoff in a force reduction) unless he refuses recall or reassignment to such job or bids off it onto another job.

This practice generally was followed from 1949 on, with the concurrence or cooperation of all grievance committeemen. The latter were consulted sometimes as often as several times a week to help determine the identity of senior "incumbents" entitled to fill such openings. Neither of the grievants in the present cases was an "incumbent" of the job he seeks at the time when the vacancies existed, although they apparently had worked the jobs at some time in the past and possessed abilities to perform the jobs. The men to whom the vacancies were in fact assigned held present incumbency rights to the jobs. Under the established practice of recognizing the recall rights of incumbents, there were no "vacancies" to post for "promotional" purposes under Section 13. 17

Section 13-B refers to seniority units and the application of seniority factors as they may be "covered by existing local agreements" and states that such agreements "shall remain in effect unless or until modified by local written agreement." The consistently applied and widely understood practice of some 13 years which the Company cites in this case is within the scope of Section 13-B and requires the conclusion that there has been no violation of grievants' seniority rights under the evidence in this case. 18

AWARD

The grievances are denied. 19

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