Arbitration #46

In the Matter of the Arbitration between:

INLAND STEEL COMPANY
Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA, CIO,
LOCAL UNION NO. 1010

March 12, 1951

Grievance 15-C-26

OPINION
and
DECISION
of the
UMPIRE

Pursuant to the current collective bargaining agreement between the above named parties and their joint letter of December 20, 1950 advising that the parties had been unable to settle Grievance No. 15-C-26 and that the matter is submitted to an impartial umpire for final determination, and pursuant to the selection by the parties of Albert I. Cornsweet of Cleveland as impartial umpire, a hearing was held on this matter on February 5, 1951 at the Conference Room of the Company at Indiana Harbor, Indiana, at which the parties and their witnesses were heard. A record of the proceedings was taken by E. J. Walton and transmitted to the umpire.

APPEARANCES included Joseph Jeneske, International Representative, Donald Lutes, Grievance Committee Chairman, August Sladcik, Committee Secretary, William Brown and Peter Calacci, Grievance Committeemen, and Paul Hendron, griever, for the Union, and, for the Company, Herbert C. Lieberum, Assistant to Superintendent of Labor Relations, T. G. Cure and R. J. Stanton, Divisional Supervisors, Labor Relations, R. P. Schuler, Assistant Superintendent, 44" Hot Strip Mill, and H. Walker, Turn Foreman, 44" Mill.

GRIEVANCE NO. 15-C-26

This grievance, dated February 23, 1950, involves the interpretation and application of Article VII of the Agreement and arises out of the promotion of Frank Bednar to the job of Assistant Roller on the 44" Hot Strip Mill. The Union contends that Paul Hendron should have been promoted, rather than Frank Bednar, claiming that Hendron has the necessary qualifications and is the senior man in point of continuous service. The company contends that Bednar was selected in conformity with Agreement provisions.

In the preamble to the sections of Article VII, Seniority, the parties recognize that "promotional opportunity . . . should merit consideration in proportion to length of service" and also recognize "that efficient operation of the plant greatly depends on the ability of the individual on his particular job."

Section 1 provides that employees will be considered for promotion "in accord with their seniority status relative to one another" and defines seniority as including (a) length of continuous service, (b) ability to perform the work, and (c) physical fitness. It then provides that where factors (b) and (c) are relatively equal, (a) shall govern and states that "In the evaluation of (b) and (c) Management shall be the judge", provided there is no discrimination against any member of the Union. Section 1 further provides that "if objection is raised to the Management's evaluation, and where personnel records have not established a differential in abilities of two employees, a reasonable trial period of not less than 30 days shall be allowed the employee with the longest continuous service

record as hereinafter provided."

Section 2 provides for the keeping of personnel records which "shall include matter relative to an employee's work performance and length of service", provides that the employee will be called in and acquainted with the reasons if his record indicates unsatisfactory service, provides for written notices of discipline or warning of infringement of regulations or improper workmanship, provides that such letters are recorded on the personnel cards and that, while "these records of the employee's individual performance have much influence on the 'Ability to perform the work' clause in Section 1," written notices of violations will not influence the employee's record after a year has elapsed following the violation.

Section 3 includes provision for promotional sequences and promotional sequence diagrams, "together with a list of the employees in the sequence and their relative relationship therein." (Underscoring added in both instances)

BACKGROUND AND POSITIONS OF PARTIES

On February 1, 1950 the job of Assistant Roller in the 44" Hot Strip Mill became vacant and Paul Hendron and Frank Bednar, both in the immediately subordinate job of Gauger, were eligible for consideration for the promotion on a permanent basis. George Berquist, who was also eligible, did not want the job and entered a waiver.

Hendron and Bednar came to the 44" Hot Strip Mill and this sequence by transfer from other departments on the same day, July 25, 1938. Their plant hiring dates are March, 1930 for Hendron and January 1934 for Bednar. The Union contends that Hendron was senior because of established practice to refer to plant hiring dates where employees enter a department or sequence on the same day and also cites the sequence list on which Hendron's name was above Bednar's. The Company contends that length of continuous service is not in issue, since it does not govern where factor (b) in seniority (ability to perform the work) is not relatively equal, and points out that there is no contractual provision for referring to plant hiring date where sequence dates are the same. Other sequence listings including men with identical dates were cited to contradict the Union's claim of preference for Hendron.

The major position of the Union is that the Company, in this instance, is attempting to introduce a new criterion — relative ability — in violation of the intent of the Agreement and long established policy.

"The Union", its brief states, "has no desire to force on the Management of the Inland Steel Company people who are obviously incapable, but, on the other hand, it does not set itself up as judge and jury to determine a man's ability in relation to someone else. The Union and the Company both have followed a policy that if a man's work is satisfactory he has every reason to believe that he can avail himself of promotions as they occur in line with his service record. . .

"The clear intent of any seniority provision is to provide promotional opportunity for satisfactory workmen on the basis of their length of continuous service, not in relation to the fact that they are satisfactory workmen and they can fly an airplane besides, or play a good game of softball. If any other interpretation is placed on seniority, then no seniority exists because people may be brought in from the outside and in short order hold down all top jobs in the plant, and the

satisfactory employee can only progress to whatever jobs cannot be filled by the Super-Duper excellent employee.

". . . if merit rating and a Company application of "relative ability" is provided as a basis for promotion in our present contract, then obviously we must start from scratch and build a seniority clause that is founded on the principle that if a man's work is satisfactory he has every reason to believe and get promotions as they come in accordance with his length of service."

The Company contends that promotion of Bednar was based on his greater ability, relative to Hendron, to perform the Assistant Roller job, it was the "judge" in the evaluation of seniority factor (b) as provided in the Agreement and exercised its judgement in good faith and on the basis of personnel records of the two men, that personnel records, submitted in evidence, do establish a "differential in abilities of two employees", making a trial period unnecessary, that consideration of relative ability in making promotions is not new nor inconsistent with past policy and has been the practice under contract terms at least as far back as 1942, that this criterion does not apply to some 90% of cases since in labor and low rated jobs the factor of relative ability is of no great consequence, and that having determined on the basis of actual personnel records that Hendron was not "relatively equal" to Bednar in ability to perform the work (b), length of continuous service, whether it be sequence service, departmental service, or plant service "has no part in determining the employee entitled to the job."

Personnel records submitted show that Bednar became a Gauger on November 16, 1938 and had worked 77 turns as Assistant Roller before Hendron had his first turn and has worked a total of 345 turns to Hendron's 239. He received no reprimand during the past year.

Hendron became a Gauger on April 14, 1946. In the past year he received four reprimands. On June 2, 1949, while Assistant Roller, temporarily, on the 4-12 turn, he failed to check the #8 mill for spall with the result that 14 bars rolled with heavy spall, and also forgot mill setting. On September 6, 1949 he failed to make a section change on four mills, resulting in scrap and the loss of an hour on the coiler. On April 26, 1949, he incorrectly reported that the #10 bottom roll was spalled, causing an unnecessary roll change. On June 15, 1949, he put #5 bottom work roll into the mill with the bearing upside down, causing unnecessary delay. In the last three reprimands it was noted that "further carelessness may be cause for discipline."

Mr. Hendron admitted receiving the reprimands and stated (P.35) "I was new on the job...I wasn't too confident about my work ... I have made mistakes on the job ... I think it did me a lot of good maybe to get them (reprimands) because I tried to improve my work after that "

Assistant Superintendent Schuler, whose promotion created the vacancy, testified (P. 107 - 116 - 117) that Hendron may have had the understanding that he was going to get the job but was never formally notified that the job was his. "I explained to him that, at the time, I didn't think that he was as qualified as Bednar" and "after he had acquired some more experience that he would be entitled to that job."

"In my estimation an assistant roller should know the mill completely, that is how it is put together, the fitting of guides and the operation of the mill. When he came over on my crew I told him that he had a great deal to learn about the mill operation. He did take some interest, but I didn't think that he had come along as far as Bednar had, in that Bednar had had those opportunities for eight years previously and was subjected to a lot of that -- mill terms, mill working conditions etc." Mr. Schuler further testified (P. 190); "I felt myself that he (Hendron) was not qualified at the time, but I couldn't contractually go by what I thought as an individual. So that is when we tried to dig out all this information on the personnel records."

Mr. Jeneske, for the Union, emphasized its position (P. 119) that the employee with greater length of service is entitled to promotion if qualified to fill the job, without regard to his relative ability to an employee of shorter length of service.

"We had all these things in our first contract -- dealing with personnel records and everything else", said Mr. Jeneske. "During the periods of time we have been operating under these contracts we have never run into a situation such as we have here recently where the Company is attempting to promote employees on the basis of their ability in relation to someone else. It is not a constant factor and can fluctuate from day to day depending upon what employees happen to be in a particular sequence or on what particular job. We say that that can't be measured; that if a man is inferior to someone else he should be notified by the Company to that extent so that he can clear up any defficiency he might have so that he may become eligible.... You have got to work with constant factors here, and I see no reason why an employee shouldn't be promoted if he is qualified and able to do the work .. if a man has something wrong with him there will be a definite indication in his performance record and that will more or less influence the man's ability to perform the work."

Mr. Jeneske also contended (P. 123) that there is no consistency in the matter of written reprimands and that, for the same offense, a reprimand may or may not be written depending on circumstance. He claimed that there had been incidents not included in personnel records of other employees promoted on the basis of "relative ability" and argued that "unless they include something on the personnel record to indicate you are not going to be promoted, I don't think they can use that as an argument."

OPINION

The parties to this, and their previous collective bargaining agreements have made a conscientious effort to strike a fair balance between the goals of maximum efficiency and economy of operation and recognition of length of service. The lines of effort toward these goals are not always parallel and, in the very nature of the labor-management relationship, often come into collision.

This umpire has never reviewed any more comprehensive and extensive seniority provisions than those spelled out in this contract. The dual recognition of length of service and of efficient plant operation is set forth in the initial paragraph of Article VII and is carefully implemented in the sections which follow.

Some labor contracts provide for promotion to the employee with greater length of service if he is qualified to perform the work, with no mention made of consideration of relative ability. Some provide that where ability to perform the work and physical fitness are relatively equal, length of service shall govern.

This contract has the latter provision and goes further. It provides that Management shall be the judge in the first instance, but protects against any exercise of mere whim or prejudice or non-objective opinion by requiring management, if its selection is challenged, to produce the employees personnel records and show a "differential in abilities of two employees."

This contract does give Management the right, in the umpire's opinion, to weigh the relative abilities of employees considered for promotion and, when the selection is made in good faith and without discrimination, and on the basis of superior work performance as shown on the personnel records of the employees under consideration, that selection must be upheld.

The umpire, however, is not in agreement with the statement made in the Company brief that "having determined that factor B is not relatively equal, length of continuous service has no part in determining the employee entitled to the job." (Underscoring added.) The opening paragraph of Article VII in particular, and a careful study of all of Section VII's provisions, contradict this extreme view, in the umpire's opinion. It is his interpretation that length of service is always a factor, that it is the factor which governs and is controlling where factors (b) and (c) are relatively equal, and that, even when (b) and (c) are relatively equal, length of service, while not controlling, must still be given consideration.

Now proceeding to the specific case of Bednar's selection over Hendron--and it is to be noted that the Agreement indicates that approach to this type of grievance must be on an individual rather than a general or blanket basis -- what is the evidence?

There is agreement that Bednar and Hendron are relatively equal in physical fitness (factor C). As to ability to perform the work (factor B) there is the testimony of Assistant Superintendent Schuler, who was in a position to directly observe Hendron's work, at least, that Bednar was better able to perform the work, there is the frank testimony of Hendron himself that he did make mistakes, and, most important is the submission of personnel records of the two men showing that, during the year, no reprimands were issued to Bednar while, on four occasions, Hendron was given written reprimands relating to negligence or carelessness in his work while acting as Assistant Roller.

The umpire does not give the same weight as does the Company to the matter of the number of turns worked by each man on the Assistant Roller job since he finds that this could be affected by the personnel complement on the various turns and, also, for the reason given by Mr. Schuler (P. 101 - 102) in the case of this job. The fact, too, that Bednar worked his first turn as Assistant Roller long before Hendron -- that fact standing alone -- does not establish greater relative ability.

The written reprimands, however, and the nature of the complaints about Hendron's work, contrasted with Bednar's spotless record while on the same work in the same period, does, in the opinion of the umpire, justify Management's decision.

Now as to length of service, the umpire finds that, despite lack of specific contract coverage on this point, there is ample evidence and sound reason to support the Union position that Bednar was junior to Hendron. But it is much like

an argument between twins as to which is older. Both men were "born" on the same day in the sequence -- and it is sequence length of service here that is concerned. To break a tie, so to speak, plant service is referred to. This does not mean that Hendron has anything but an "edge" on Bednar in rights or benefits based on sequence service, though, of course he has an advantage of almost four years in plant service. It is noted that Schuler testified that Hendron would have gained the promotion if his ability to perform the work had been relatively equal to that of Bednar. (P. 110 and 151)

The fear of the Union, as expressed by Mr. Jeneske, that capable employees with greater length of service would be passed over for younger employees who "can fly an airplane" or "play a good game of softball" in addition to satisfactory work, is not well founded. The Agreement rules out any such consideration, specifying "matter relating to an employee's work performance" is to be included in personnel records.

There was considerable discussion at the hearing about the list of employees in the sequence and their "relative relationship therein" (quotation from Section 3, second paragraph). The Union pointed out that Hendron's name was above Bednar's on this list and contended that this not only established Hendron's greater length of service but also indicated that he was in line for promotion all factors (a, b and c) considered.

While the language quoted from the Agreement on this point is not crystal clear, the umpire believes that the list refers only to length of service. This belief is largely based on the testimony of Grievance Committeeman Brown who stated (P.39): "The understanding that I have always had, the man on top he has ... as Mr. Schuler says, they are listed 1,2,3, but the man on top always has the longest departmental record, and in rotation on down." (Underscoring added) The umpire suggests that any difference in interpretation of "relative relationship" in the matter of department lists should be resolved by the parties and that any ambiguity be eliminated in the next Agreement.

There is some merit in the Union contention that consistency and uniformity in issuing reprimands and notations on employees' personnel records is not wholly possible; that foremen will issue reprimands when there is heat on them from above and overlook rule violations of negligence when they are in an easier frame of mind. But, as the umpire pointed out at the hearing, no system can be perfect, and it is much better to require such records in determining relative ability than to depend, as is often the case in other plants, on the unsupported opinion of the foreman or supervisor.

One comment on the arbitration cases cited by the Company --- they hold that decisions of Management to decide who is best qualified for promotion can only be challenged if bad faith or arbitrary or capricious or discriminatory action is proven. That may well be the case in the arbitrations cited, but this contract requires more than good faith, etc. in making promotions. This contract requires a showing on the personnel records of a "differential in abilities of two employees." And, in the matter of the promotion of Bednar, where the difference in length of service between him and Hendron is only a "shade", and where the personnel records do show a real differential in abilities, there is compliance with the terms of this contract in the opinion of the umpire.

In concluding this opinion the umpire wishes to repeat that length of continuous

service is a factor and must be taken into consideration in any promotion even when factors (b) and (c) are relatively equal. It is not the governing factor in such cases and can be outweighted by a substantial difference in the other factors, but it is, under this contract, a factor that cannot be ignored.

DECISION

It is the decision of the umpire that promotion of Frank Bednar to the job of Assistant Roller on the 44" Hot Strip Mill was not in violation of the collective bargaining agreement and that the grievance of Paul Hendron (15-C-26) is denied.

/s/ ALBERT I. CORNSWEET

Albert I. Cornsweet, umpire