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In the Matter of Arbitration)
between)
Inland Steel Company,)
Indiana Harbor Works,)
East Chicago, Indiana.)
and)
United Steelworkers of America, C.I.O.,)
Local Union No. 1010,)
East Chicago, Indiana.)

Decision and Award
in
Grievance 14-D-17

Arbitrator: John J. Kehoe,
20 North Wacker Drive,
Chicago 6, Illinois

Hearing held at East Chicago, Indiana, December 7, 1954.

Appearances:

For the Union:

Cecil Clifton
H. Spence
J. Wolanin
J. Sargent
F. Gardner

For the Company:

W. T. Hensey, Jr.
R. P. Schuler
L. R. Barkley
L. Lyon
J. Kiser

A stipulation was entered into by the parties, and the following is quoted from the text thereof:

"The Management of the Indiana Harbor Works of the Inland Steel Company and Local Union 1010 of the United Steelworkers of America, CIO, have been unable to settle the above numbered grievance, and in accordance with step number 4, under Section 2, Article VIII, entitled "Adjustment of Grievances", of the Agreement between the Company and the Union, dated July 1, 1954, the matter is now to be submitted to an impartial umpire (John J. Kehoe) for final determination.

The question to be decided by the Arbitrator is whether or not the Company was in violation of Article VII, Section 4(b) and Article XIV, Section 6 of the July 30, 1952 Collective Bargaining Agreement when it denied Grievance 14-D-17, filed March 30, 1954, which contended that H. Spence, Check No. 10750, was improperly denied promotion."

For the Company
By: Herbert Lieberum/S

For the Union
By: Cecil Clifton/S

Signed at East Chicago, Indiana, Nov. 19, 1954

NATURE OF THE CASE

Under a memorandum of understanding between representatives of the parties, dated November 7, 1947 and continuing in effect to the present date, a basis was established for movements of employees within job sequences related to one another in the Company's 44"-76" Slab Yard Department. One of such job sequences

is "Inventory Clerk".

The instant grievance concerns itself with Paragraph 3 of the November 7, 1947 memorandum as quoted below:

"Any further vacancy on the Inventory Clerk job will be filled by the oldest, qualified man from the following group: Stocker, Stocker Helper, Slab Record Clerk, Magazine Operator or Charging Hooker".

On February 11, 1954 a notice was posted covering two permanent vacancies for Inventory Clerk and, out of eight employees bidding, two were selected and filled the job beginning March 1, 1954. The sequential seniority date of one employee thus selected, E. Hreha, a Slab Record Clerk, was November 2, 1938. The sequential seniority date of the other employee thus selected, E. Misewicz, a Stocker Helper, was October 22, 1944. H. Spence, a Charging Hooker, with sequential seniority dating to April 18, 1940 was numbered among the six unsuccessful bidders for one of the two openings. The Union challenged the selection of Misewicz and filed Grievance 14-D-17 in Spence's behalf on March 30, 1954. No satisfactory settlement was reached in Steps 1, 2 and 3 of the grievance procedure contained in the agreement between the parties, and the grievance is now being arbitrated in accordance with Step 4 of said grievance procedure.

SUMMARY OF THE EVIDENCE

I. UNION POSITION

1. H. Spence entered the Slab Yard sequence and established seniority therein beginning April 18, 1940;
2. E. Misewicz entered the Slab Yard sequence and established seniority therein beginning October 22, 1944;
3. H. Spence's ability to perform the duties of Inventory Clerk, and his physical fitness to do so, has never been questioned by the Company (Article VII - Section 1 b and c);
4. The grievant, H. Spence, with sequential seniority dated April 18, 1940, had the right to promote to Inventory Clerk on March 1, 1954 before E. Misewicz, with sequential seniority dated October 22, 1944, had the right to demote to that job;
5. The Company is in error in interpreting Article VII - Section 6 (b) to mean that the Company has the right to permit employees with less sequential service to bid jobs ahead of employees with greater sequential service, except during a specific period when the employee with greater sequential service may have had a "Waiver of Promotion" in effect; and the Union contends that when said employee with greater sequential service has withdrawn his waiver his established service date should again be the controlling date for recognition in filling higher or more preferable jobs than his own in his sequence;
6. If, through the Company's application of its theory of sequential seniority standing, the grievant, H. Spence, is to be prevented from asserting his own seniority during a period as long as $2\frac{1}{2}$ or more years after he has withdrawn his waiver, or until any or all of the employees who moved around him during said waiver period have had opportunities to move up or down ahead of him, then the net result to Spence; in effect, is that he has forfeited his seniority and his April 18, 1940 date becomes something less than it should; and the Union, therefore, contends that such an eventuality was not the intent of the parties

in negotiating the collective bargaining agreements;

7. The Company violated Article VII - Section 4 (b) because, as provided therein, it did not fill the Inventory Clerk vacancy from among applicants in accordance with the provisions of Article VII - Section 1, since the grievant, H. Spence, had longer "Length of Continuous Service" (Article VII - Section 1 a) than E. Misewicz who was appointed to fill the vacancy.
8. The Company violated Article XIV - Section 6 when it failed to adhere to Paragraph 3 of the Memorandum of Understanding in effect since November 7, 1947 which was the established basis for selecting applicants for Inventory Clerk vacancies, and the grievant, H. Spence, was, on March 1, 1954, the oldest, qualified man in the group specified in said Paragraph 3 and should have been promoted to the vacancy.

II. COMPANY POSITION

1. The vacancy existing on the Inventory Clerk job on March 1, 1954, was properly filled by E. Misewicz, and the grievant, H. Spence, was not entitled to promotion thereto as claimed;
2. The grievant's "Length of Continuous Service" (Article VII - Section 1 a) was altered or modified by his "Waiver of Promotion" (Article VII - Section 6 b) which waiver period extended from March 1, 1948 to August 21, 1951. The Company admits that the grievant, H. Spence, on March 1, 1954, possessed the required ability and physical fitness to perform the duties of Inventory Clerk (Article VII - Section 1 b and c) and that only Spence's "Length of Continuous Service" (Article VII - Section 1 a) is at issue herein;
3. Article VII - Section 6 b, paragraph 1, provides:

" * * * Employees may withdraw their waiver or announce their invention to fill future vacancies *** following which they shall again become eligible for promotion, but an employee who has so waived promotion and later withdraws it as herewith provided shall not be permitted to challenge the future higher sequential standing of those who have stepped ahead of him as the result of such waiver, until he has reached the same job level above (by filling a permanent opening) as those who have stepped ahead of him * * *"

During the grievant's waiver period, in effect from March 1, 1948 to August 21, 1951, 24 other employees gained future sequential seniority over Spence by moving around him to fill occupations higher in the Slab Yard sequence, and all of such 24 employees are thus entitled to promote ahead of Spence;

4. E. Misewicz, one of the successful bidders for the Inventory Clerk vacancy effective March 1, 1954, was one of such employees who had gained sequential seniority standing over Spence; and even if Misewicz had not entered a bid for said vacancy Mr. Spence still would not have been the employee entitled to the job because M. Fernandez (Sept. 5, 1949) and R. Fleischmann (Sept. 1, 1950), who were two of the six unsuccessful bidders for the March 1, 1954 vacancy on Inventory Clerk, held sequential standing over Spence (April 18, 1940).
5. There has been no violation of Article VII - Section 4 (b) inasmuch as said Article and Section are not applicable to the circumstances involved in the instant grievance;

6. There has been no violation of Article XIV - Section 6 inasmuch as:

- 1st. The posting for Inventory Clerk on February 11, 1954 was the only permanent opening to exist on that occupation from the posting date back to November 7, 1947; and
- 2nd. On many occasions during the above mentioned period the Company followed the practice of permitting employees with less sequential service to move around and fill jobs higher in the sequence whenever other employees with greater sequential service have had waivers in effect; and that in no instance was such practice challenged within the contractual time limits on the filling of such vacancies. (Company Exhibit 1 - Page 8, 9, 10 and 11.)

DECISION

The instant grievance deals exclusively with the subject of Seniority and, particularly, the interpretation of certain seniority provisions in Article VII of the collective bargaining agreement between the parties. It is desirable, therefore, to premise this decision with a brief comment concerning Seniority and what the parties to a collective bargaining agreement normally expect it to accomplish.

Seniority is an accepted and fundamental principle in American society. It is incorporated as a basic practice in the functioning of legislative bodies such as the Congress of the United States. It is given almost universal application in different divisions of Federal and State Governments, such as units under civil service and the commissioned branches of the Armed Services. It has been affirmed through various instances of Federal and State legislation, and has been given legal sanction by the highest court in the land. It is embodied in a predominant number of collective bargaining agreements in private industry, and all of these applications and actions constitute a decisive recognition of the cardinal value of the principle of seniority.

However, it is in the interpretation and application of seniority provisions embodied in collective bargaining agreements that Unions and Companies find room for disagreement, despite the apparent effort and desire on the part of both to provide workable arrangements for plant operational efficiency without injury to the rights of individual employees.

Company managements interpret seniority in a manner calculated to insure an economical and orderly movement of employees within occupational and production sequences, while Unions look upon it as a necessary protective device with which employees expect to hold management's discretion to an impartial and impersonal basis in choosing who is to be laid off or who is to be promoted. The Unions feel, and perhaps rightfully so, that seniority and the protection that goes with it are basic rights of employees which must not be impaired except on a very clear showing.

Seniority causes little concern in matters pertaining to civil service or legislative committees since there are no problems there involving day-to-day temporary work absences, lay-offs, step-backs, etc. In industry there are such problems and seniority, therefore, becomes the rightful concern of management as well as employees. Seniority would create no problem in industry if there were no lay-offs and no occasion to promote anybody, and since such problems do exist they must be faced and adjudicated.

Upon the basis of all the evidence presented in this case, both oral and written, the arbitrator interprets the various contract provisions as follows:

Article VII - Section 1.

Section 1 (a)

The grievant H. Spence, has established April 18, 1940 as the date from which his sequential seniority should be reckoned in the Slab Yard sequence.

Section 1 (b) and (c)

There is no dispute between the parties as to these sections. The Union contended, and the Company did not deny, that Spence, on March 1, 1954, possessed the ability and the physical fitness to perform the duties of Inventory Clerk.

Article VII - Section 4.

The interpretation to be made here concerns the words "altered or modified" in Line 10, paragraph 1, of the printed text of the agreement dated July 30, 1952. An employee's seniority standing, in reality, cannot actually be altered or modified; it can be rendered temporarily ineffective, in which case the questions become (1) How?, and (2) For what period of time?. An employee's inherent right to waive a specific promotion answers the first question, and the answer to the second question is determined by the period of time the employee chooses to permit his waiver to remain in effect.

Article VII - Section 4 (b)

Fixing Spence's sequential standing as April 18, 1940, Misewicz' sequential standing, following the same reasoning, must be fixed as October 22, 1944. Then it follows that Spence should have been promoted to Inventory Clerk on March 1, 1954 in accordance with the provisions of Article VII - Section 1. Spence had the longest sequential service of any of the eight applicants for the job, except Hreha whose appointment Spence did not challenge.

Article VII - Section 6 (b)

The issue here revolves around an interpretation of the words "future higher sequential standing" in Line 12 of the printed text of the agreement dated July 30, 1952. As a result of Spence's waiver period from March 1, 1948 to August 21, 1951, his "Length of Continuous Service", dating from April 18, 1940, was merely rendered temporarily ineffective for the period of the waiver, not altered or modified indefinitely. In appraising now the probable intent of the parties at the time the agreement was negotiated, it is reasonable to question whether either party seriously expected that an employee's seniority could possibly be altered or modified for a period lasting beyond the withdrawal of an employee's waiver.

To all intents and purposes, if the Company's affirmative interpretation in this instance were to be upheld, Spence has, indeed, incurred an indefinite alteration or modification of his seniority standing because the Company will not accept Spence's bid on any higher job until all of the employees who moved around him during his waiver period have exhausted their "Future higher sequential standing" as interpreted by the Company. (See Pages 8, 9, 10 and 11 of the Company's brief). This could go on ad infinitum, with mounting clerical and administrative costs to the Company and confusion to the employees concerned, unless the words "Future higher sequential standing" are interpreted as having determinable limits. What if there had been 50 or more employees who had moved around Spence during his waiver period instead of 24? Would the Company's interpretation be the same? If the answer is in the affirmative, then Spence would be a very old man (possibly physically unfit for some jobs) before he again would have an opportunity to promote - a contingency the arbitrator doubts was in the minds of the contracting parties.

It is the arbitrator's interpretation that the employees who moved around Spence gained "future higher sequential standing" over Spence only for the period during which Spence permitted his waiver to remain in effect. Spence did not challenge the right of another qualified employee to move around him and promote during the period when he had a waiver in effect; and Spence did not and could not challenge the right of any such employee to hold the job he had successfully bid in unless and until he himself (Spence) could have promoted to that job on a permanent basis. Having withdrawn his waiver on August 21, 1951, Spence, on that date, again made his seniority effective and he again became eligible for promotion, with "Length of Service" preference (Article VII - Section 1 a) over any or all employees in his sequence possessing less seniority.

Article XIV - Section 6.

The issue herein primarily concerns two employees - Spence and Misewicz - and Article XIV - Section 6, being a rather general clause for the benefit of all employees, is, therefore, not directly applicable in the instant grievance.

SUMMARY

It is the decision of the arbitrator that the Union has proved its contention that the Company violated Article VII - Section 4 (b) when it did not fill the vacancy from among applicants in accordance with the provisions of Article VII - Section 1 (a), because, on March 1, 1954, Spence possessed greater length of sequential seniority than Misewicz.

The Union's grievance 14-D-17 is, therefore, affirmed insofar as it relates to Article VII - Section 4 (b).

AWARD

1. H. Spence, Check No. 10750, is entitled to the Inventory Clerk job on a permanent basis, and should have been so promoted on March 1, 1954 instead of E. Misewicz.
2. The grievant, H. Spence, is to be paid all money due him since March 1, 1954, the date E. Misewicz filled the Inventory Clerk vacancy.

Signed John J. Kehoe
John J. Kehoe

Dated at Chicago, Illinois, this 23rd day of December, 1954.