INLAND STEEL COMPANY )
)
and )
)
UNITED STEELWORKERS OF AMERICA )
Local Union 1010 )

Grievance No. 13-F-15
Docket No.IH 134-134-1/31/57
Arbitration No. 202

Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations
A. T. Anderson, Divisional Supervisor, Labor Relations
Paul Brum, General Mechanical Foreman, 76" Hot Strip Mill

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Secretary, Grievance Committee
Don Lutes, Grievance Committeeman
H. Lopes, Assistant Grievance Committeeman

This grievance questions the Company's right to use written tests to determine whether an employee has the necessary ability to be promoted to the entry or bottom job in a sequence, in this case the Shop Helper job in the Mechanical Sequence. A similar question was raised in Grievance 8-E-36, and the award in that case should be read together with this award. That case sustained the general right of the Company to use such tests. That case, however, was remanded to the parties for disposition in accordance with the observations contained in the opinion. There was insufficient evidence as to the relative abilities of the grievant and the employee who was given the job, and the controlling section of the Agreement (Article VII, Section 1) calls for a 30 day trial period for the employee with the longer continuous service where ability and physical fitness are relatively equal.

In the present case the Union complains that the oldest employee was not given the job, a younger employee getting it after the Company's written test, and requests that the Company "quit giving tests to qualify a man for a job opening." The contract provisions alleged to be involved are Sections 1 and 2 of Article VII.

Section 1 defines seniority and provides that employees shall be given consideration as to promotional opportunities for positions not excluded from the bargaining unit, as well as job security and preference in reinstatement after layoff, "in accord with their seniority status relative to one another," and declares that

> "'Seniority' as used herein shall include the following factors:
>
> (a) Length of continuous service as hereinafter defined;

(b) Ability to perform the work; and

(c) Physical fitness.

"It is understood and agreed that where factors (b) and (c) are relatively equal, length of continuous service as hereinafter defined shall govern. In the evaluation of (b) and (c) Management shall be the judge; provided that this will not be used for purposes of discrimination against any member of the Union. 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 thirty (30) days shall be allowed the employee with the longest continuous service record as hereinafter provided."

The Union's proposed interpretation of Sections 1 and 2 of Article VII would severely restrict Management in judging the relative abilities to perform the work, despite the fact that the Agreement makes Management the judge of this factor and relative physical fitness as well. The conferring of such discretion on Management imposes the obligation on Management to be accurate and fair in its evaluation, and all reasonable and normally acceptable techniques for meeting this obligation, unless prohibited by the Agreement, may certainly be employed.

It is to be noted that Management's right to evaluate relative physical fitness flows from the very provision which gives it the right to judge ability to perform the work, and Management's use of physical examinations in this connection has not been questioned. If the argument is that physical examinations have been in use for some time, then it must be pointed out that the same is true of various written tests. For some time before the 1956 Agreement was made such tests were in use for this very purpose in many departments of the Company.

Significantly, they have been in use in connection with promotion to bottom jobs in mechanical maintenance sequences as well as in other sequences. This is entirely consistent with the broad coverage of Section 1 of Article VII. Seniority as defined is declared to control "in respect to promotional opportunity for positions not excluded from said unit," referring to the bargaining unit as a whole. If it were intended, in view of this, to accord different treatment to jobs in the mechanical maintenance sequence, then it is reasonable to say that such an exception should have been clearly indicated.

Written tests constitute, then, one acceptable and reasonable way of determining ability to perform the work; certainly they can furnish credible evidence on the subject. However, Management must remember that in using them as part of the process of evaluating the relative abilities of two or more employees the test must be fairly designed to test the ability to perform the work of the job in question, and may not be used to disqualify a man who has such ability but demonstrates perhaps a lack of qualification to progress beyond the given job. If the type of test does not fairly reflect the ability to perform the given job then it could well be

found that the test is improper in the exercise of the function expressly reserved to Management in marginal Paragraph 133 (Section 1, Article VII).

It was not so contended or shown in this case; on the contrary, the type of test given seems to be designed to search out necessary qualities and knowledge for the kind of work involved.

Unlike the presentation in the dispute in Grievance 8-E-36, evidence was offered in this case showing relative ability to perform the work. Grievant received a grade of 64.3% in the written test, while the successful employees earned grades of 86.7% and 78.5% in the same test. Consequently, the provision that where personnel records do not establish a differential in abilities of two employees, the longer service employee shall be given a 30 day trial on the job, does not come into play in this case.

AWARD

This grievance is denied.

Dated: October 7, 1957

David L. Cole
Permanent Arbitrator