SENIORITY

SEC 163

IN THE MATTER OF ARBITRATION between [illegible] STEEL COMPANY and UNITED STEELWORKERS OF AMERICA, Local Union 1010	ARBITRATION AWARD No. 342 Appeal No. 12 Grievance No. 8-F-48

PETER M. KELLIHER
Arbitrator

APPEARANCES:

FOR THE COMPANY:

W. A. DILLON, Assistant Superintendent, Labor Relations Department
R. J. STANTON, Assistant Superintendent, Labor Relations Department
R. A. SENOUR, General Foreman, 28" Mill
H. S. ONODA, Labor Relations Representative
M. S. RIFFLE, Divisional Supervisor, Labor Relations Department
FRED FARKAS, Grievant

FOR THE UNION:

CECIL CLIFTON, International Staff Representative
F. GARDNER, Chairman, Grievance Committee
J. WOLANIN, Secretary, Grievance Committee
W. YOUNG, Grievance Committeeman
C. HUFF, Aggrieved

THE ISSUE

The grievance refiled on August 20, 1958, reads:

"R. Huff, #11267, claims his seniority rights are being violated by younger men in the sequence being placed above him on the occupation of Table Operator.

The younger men are F. Ferkas, #11755, and M. Gonzales, #11600. The above named men were placed above the grievants from the 14th of July to July 31st.

The Union claims a violation of Article VII, Section 1 &/or 3.

The Union requests that the aggrieved by given his rightful place in the sequence above the younger men promoted above him and be paid all monies lost."

DISCUSSION AND DECISION

Article VII, Section 6(b), is controlling and reads:

"WAIVER OF PROMOTIONS. An employee may waive promotion by signifying such intention to his supervisor or shall be considered as waiving if he fails to step up to fill a vacancy. Such waivers shall be noted in the personnel records and confirmed by the Company in writing. Employees may withdraw their waiver or announce their intention to fill future vacancies (which the Company shall also note in personnel records and confirm in writing), following which they shall again become eligible for promotion, but an employee who has so waived promotion and later withdrawns 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, at which time his waiver shall be considered as having no further force and effect."

The evidence is that Mr. R. C. Huff, the Grievant with a sequence date of March 18, 1954, occupied a job as Test Carrier in the Mill Operating Sequence in the 28" Mill Department. Mr. F. Farkas, with a sequence date of November 16, 1954 and Mr. M. Gonzales, with a sequence date of February 16, 1955, had "stepped ahead" of the Grievant. It must be found that there was a constructive waiver by the Grievant because he failed to step up to fill vacancies under circumstances where he reasonably must be presumed to have known that these employees were filling vacancies in jobs higher in the sequence. On February 2, 1958, the Grievant and the two above-named employees were placed in the Scrap Hooker classification as the result of Award No. 167.

Arbitration Award No. 289 has been cited as being pertinent to a determination of this issue. The first paragraph of that Award indicates that the Grievances were filed on behalf of the employees, who although junior to other employees in terms of sequential length of service, had moved above these older employees in the sequence by virtue of either waivers of promotion or denials of promotion. These employees, who were junior in terms of sequence dates, had higher sequential standings. The Grievants were stepped back pursuant to the ruling in Arbitration Award No. 167 and came into competition with sequentially older employees for jobs occupied by the older

employees. Arbitrator Cole described the Company's position as follows:

> "Finding now that it has too many employees in given jobs or sequences for the permanent jobs available, it has stepped back those with the shortest sequential length of service. In cases in which a senior employee was occupying a lower-graded job to which the junior was stepped back, because of the senior's prior waiver or failure to be promoted, when the process called for the selection of one or the other, the Company deemed the waiver or failure to be promoted disability wiped out and gave superior job rights to the employee with the greater length of service. This gave rise to these eight grievances.
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> The Union argues that the senior employee could not regain his former superior standing over such a junior employee by reason of working on extended operations, that in the past under similar conditions the Company has given priority to employees with superior sequential standing rather than to those with greater sequential length of service, and that the Company is misapplying the promotion and stepback provisions of Article VII."

The Union argued against this position and urged that in the past, the Company, at least where work on extended operations was involved, had given priority to "employees with superior sequential standing rather than to those with greater sequential length of service". The Arbitrator there concluded:

> "Fundamentally, Article VII, especially in Sections 3, 4, 7 and 6(b) and 8(b), protects employees in the matters of promotion, demotion and stepbacks on the basis of sequential length of service. Superior standing may be attained by those with less sequential length of service in special circumstances, but provision is made

for the senior employee to regain the advantage of his greater length of service. While he may not assert this while the junior holds a job at a higher level, because of waiver or similar reasons, there is no provision of the Article by which the senior employee is required to relinquish his stronger claim to his own job to an employee who has shorter length of service. The senior employee never waived or declined his own job, or if he did he has since rectified this. The younger employee had a stronger sequential standing as to the job above that held by the senior employee, but not as to the very job the senior employee is holding; when both are at the same level the senior employee must be held to have recovered his relative standing."

Arbitrator Cole supported the Company's position and denied the grievance.

It is noted that the Union, in Arbitration No. 289, had urged that the senior employee could not regain his former superior "standing", while it would appear that the Parties were concerned simply with the senior employee holding his present job, the Company's position is stated as being concerned with the "selection" of either the junior or senior employee and not simply the "retention". The Union urged that the Company was "misapplying" the "promotion" provisions. It is clear that the Company in that case urged that after the stepback, the waiver disability had been "wiped out" and the Company there followed the practice of giving "superior rights to employees with the greater length of service". It was this position of the Company that was upheld by the denial of the grievance.

There can be no question that as Arbitrator Cole stated: "Fundamentally", Article VII protects employees "on the basis of sequential length of service". The rights obtained by superior "standing" are described by special language in the nature of an exception. When the senior employee "fails to step up", there can be no question that this represents a forfeiture of valuable seniority rights. Courts of law and arbitrators hold that forfeitures must be strictly construed and that in the absence of clear notice, an employee is not to be held to forfeit seniority rights.

In analyzing the specific language, it must be found that the Grievant did constructively waive promotion. This waiver, however, was effectively withdrawn. The only basis, thereafter upon which he could "challenge the future higher sequential standing of those who have stepped ahead of him" as a result of his original waiver was upon meeting the condition of reaching "the same job level above as those who have stepped ahead of him". The word "until" acted as a bar against the senior employees challenging the future higher sequential standing of those who stepped ahead of him. Once he satisfies the condition specified, then the waiver is considered as having no force and effect. There can be no question here that when all three employees were in the Scrap Hooker classification that Mr. Huff had then reached the same job level above,

i.e., the job of Test Carrier, a job where the other employees had stepped ahead of him. All of the employees were then filling permanent openings as Scrap Hookers.

Article VII, Section 6(b) does not say that the senior employee must reach the highest job level attained by the junior employee. The Parties are presumed to be aware of the fact that there is considerable movement within sequences. If the Parties intended that the senior employee was to have no possibility of fully withdrawing the effect of his waiver until "he had reached the highest level attained by the junior employee", they would have found clear and precise language to express such an understanding. In practical operation, it would be almost impossible for the senior employee to reach the highest job level of junior employees except in terms of attaining the highest job in the sequence in order to have the waiver rendered without further force and effect. In the absence of precise language putting an employee on notice, the waiver cannot be considered as such a broad forfeiture of valuable seniority rights. This is particularly true because under prior Awards, the junior employee can promote to higher positions on a temporary basis - under a somewhat vague and uncertain standard of a constructive waiver and the senior employee cannot challenge his higher sequential standing achieved merely by these temporary promotions until he meets

the more stringent condition of "filling a permanent opening" in the "same job level above". (Emphasis added) The Arbitrator must find that once the Grievant was at the same level on a permanent basis as the other two employees in the Scrap Hooker occupation, the waiver was of no further force and effect.

The Company conceded that when these employees were in the Scrap Hooker classification, the Grievant had a right to go to the next higher job in the sequence of Roll-Builder-Helper before the other two employees. (Tr. 68) The only limitation is that the senior employee may not assert his seniority "while" the junior employee holds a job at a higher level. In the words of Award 289, the younger employee "had" a stronger sequential standing as to the job above prior to the stepback. As Arbitrator Cole stated in this Award, "when both are at the same level, the senior employee must be held to have recovered his relative standing". (Emphasis added)

The factual situation in Award 289 and in this present case was the result of a step back and not the meeting or "catching" of the junior employee on the highest level attained by the junior employees.

In Arbitration Award No. 269, Arbitrator Cole stated that the "central point at issue" in that case was whether Mr. Walsh had in effect "waived promotion". It is evident by the

underscoring supplied by the Arbitrator in that case that he was concerned only with the first sentence of Section 6(b) and not with the language here involved.

In Arbitration Award No. 269, no consideration was given to the question of an employee reaching the same job level above by filling a permanent opening as those who stepped ahead of him. Section 6(b) has been applied in practice to both permanent and temporary promotions. Once an employee has effectively withdrawn his waiver, he then becomes "eligible for promotion". When he has reached the same job level above by filling a permanent opening, in the words of Arbitrator Cole in Arbitration Award No. 289, he "must be held to have recovered his relative standing", i.e. not simply sequential length of service. It must be noted that the finding in our case does not cover the situation where the junior employee has permanently occupied a higher position in the sequence.

The language of the exception set forth in Section 6(b) must be strictly construed because a junior employee can step ahead of a senior employee simply on the basis of a temporary promotion and without actual notice to and waiver by the senior employee.

AWARD

The grievance is sustained.

(signed) Peter M. Kelliher
PETER M. KELLIHER

Dated at Chicago, Illinois
this 29th day of June, 1960.