

Award No. 790
OPINION AND AWARD
In the Matter of Arbitration Between
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 25-R-93

Appeal No. 1401

Arbitrator: Herbert Fishgold

October 5, 1988

Appearances:

For the Company

Robert Castle, Section-Arbitration & Advocacy, Union Relations

Marian Javorek, Section Manager, Flat Mill Roll Shop

Dan Mika, Day Supervisor, No. 4 Roll Shop

Phil Perry, Day Supervisor, No. 5 Roll Shop

Sandy Lugosan, Supervisor of Administration, Roll Shops

Vince Soto, Project Representative, Union Relations

For the Union

J. Robinson, Arbitration Coordinator

D. Prendergast, Grievant

J. Brogan, Witness

T. Hargrove, Griever

M. Mezo, President

Statement of the Grievance: The Company is violating the seniority rights of D. Prendergast, #28539. K. Earl [now deceased], #25963; and C. Hernandez [deleted at Step 4 Hearing], #25590.

Relief sought: Assign Grievants their rightful promotional standing in the Hooker Sequence. (The relief sought was amended at the Step 4 Hearing to delete C. Hernandez as a Grievant).

Contract provisions cited: The Union cites the Company with alleged violation of Article 3, Section 1; and Article 13, Sections 2, 3, 6 and 8 of the Collective Bargaining Agreement.

Statement of the Award: The grievance is denied.

CHRONOLOGY

Grievance No. 25-R-93

Grievance filed: July 15, 1986

Step 3 hearing: October 29, 1986

Step 3 minutes: November 3, 1986

Step 4 appeal: November 26, 1986

Step 4 hearing(s): August 19, 1988

Step 4 minutes: August 24, 1988

Appeal to Arbitration: August 24, 1988

Arbitration hearing: August 25, 1988

Award issued: October 5, 1988

Facts:

The Grievants, D. Prendergast and K. Earl, were incumbents of the two-step Crane Sequence in the No. 5 Roll Shop -- Roll Shop Craneman and Roll Shop Hooker. At the time of the instant grievance, they were in the 2nd step position of Roll Shop Hooker. The seniority list for this sequence reflected the following relationships as of January, 1985, July, 1985 and January 1986:

Roll Shop Craneman (91-1070)

Name & Check No.	Hire Date
Brown, E., Check No. 25902	7/14/65
Dunlap, F., Check No. 25196	4/29/70
Heredia, G., Check No. 28597	10/1/73
Delgado, A., Check No. 13022	2/16/76
West, E., Check No. 13990	3/25/77
Grotte, D., Check No. 16228	5/10/77

Roll Shop Hooker (91-1072)

Name & Check No.

Prendergast, D., Check No. 28549

7/6/70 PDP*

Earl, K., Check No. 25963

8/27/70 PDP*

Hernandez, C., Check No. 25590

5/12/76 PDP*

Krill, W., Check No. 17161

5/31/77

Colon, L., Check No. 18403

9/19/77

Allen, W., Check No. 13931

9/11/78

* Denotes permanent denial of promotion

In April, 1986, the crane in the No. 5 Roll Shop was fitted with a radio control device permitting an employee to operate the crane from the ground. This technological change prompted a job combination and a new job of Material Transporter was established as a substitute for the Roll Shop Craneman job. Thereafter, when the crane was operated, no Hooker was assigned to augment the operation. Instead, the Material Transporter both hooked the material to be lifted and operated the crane by radio control in order to move material.

According to the Seniority Listing for No. 5 Roll Shop Crane Sequence, dated April 29, 1986, also reflected in the July 1986 Listing, two employees -- Krill and Colon -- junior to the Grievants in the sequential standing of the Roll Shop Hooker position, had established higher sequential standing to the new Material Transporter job. The subject grievance was then filed alleging that these promotional standing numbers constituted a violation of the Grievants' seniority rights.

More specifically, the grievance alleged that the Company violated Article 3, Section 1 and Article 13, Sections 2, 3, 6 and 8 of the Agreement when employees Krill and Colon were given supervisor promotion standing numbers to the Material Transporter job ahead of Prendergast and Earl. (Earl died subsequent to the filing of the grievance and the parties stipulated that the decision with respect to Prendergast will apply to Earl).

Discussion:

The instant grievance involves the application of Article 13, Section 3, entitled Seniority Sequence. In particular, Marginal Paragraphs 13.11 and 13.12, which read, in relevant part, as follows:

13.11 The existing promotional sequence diagrams, together with a list of the employees in the sequence and their relative relationship therein, shall be posted upon the bulletin boards in the department involved, and such sequence diagrams shall remain in effect for the life of this Agreement unless changed by mutual agreement...

13.12 The lists of employee relationships shall be kept up-to-date by the departmental management and made available for review upon request (which shall not be unreasonably denied) by the Area Grievance Committeeman. A copy of such lists, which is furnished to the Union in accordance with Section 3 of this Article, shall be provided him once each six (6) months. Where a new department is established, such sequence diagrams and lists shall be established under the principles set forth above. Where a permanent change in the relationship of jobs in a sequence takes place or new jobs are installed, the sequence diagrams and lists referred to in this Section shall be revised under the principles set forth above. Such diagrams and lists shall take effect at the time of posting, subject to being revised under the grievance procedure of Article 6 hereof, beginning with Step 2, by a complaint filed within thirty (30) days from the date of posting, provided, however, that typographical errors first occurring subsequent to the date of this Agreement will not prejudice the seniority rights of the individual employees in the future.

In addition, Article 13, Section 8G, Marginal Paragraph 13.44 reads as follows:

13.44. b. Employees who have or shall request permanent demotion to a lower job may later change their minds, or employees who have been, or are denied promotion in accordance with the provisions of this Article, and employees demoted for cause under Article 3, may later correct the cause for such action. In such cases the employees shall again be considered eligible for promotion, but they shall not be permitted to challenge the higher standing on the jobs above of those "who have stepped ahead of them until they have reached the same level above, by filling a permanent opening, as those who have stepped ahead of them.

By way of additional background, the record indicates that as far back as January 1976, the No. 5 Roll Shop Seniority List showed Prendergast as a Hooker, with a specific waiver for Craneman position denoted by his name, because he had indicated he did not want to promote. The same waiver was reflected on the Seniority List for July 1976, January 1977, and January 1978.

In May 1978, Prendergast did not pass the Medical Department's Mobile Equipment Operator's licensing eye exam (MOL-Critical), and was not issued a license, thereby precluding him from promotional opportunity to the Craneman position. From January 1979 thru January 1983, the Seniority List continued to list Prendergast as a Hooker, but denoted no restriction next to his name. Beginning with the August 1983 Seniority List, and continuing through the July 1984 Seniority List, Grievant's name appeared with a "Denied Promotion."

Thereafter, as already noted, the Seniority Lists for 1985 and 1986 showed a "Permanent Denial of Promotion" next to his name. In March 1986, Grievant passed the test for MOL, and the "PDP" restriction was removed. However, as noted, a "previous restriction" was denoted on the July 1986 Seniority List. As a result, although Prendergast has the most seniority in the Hooker position, he is now third in terms of opportunity to promote to the Material Transporter position, with Krill and Colon, though junior in seniority, being ahead of him.

At the outset, the Company argues that the subject grievance is not arbitrable for reasons of being untimely. In support of that position, the Company maintains that from 1983 onward, seniority lists show Prendergast as having denials of promotion attached to his standing on the No. 5 Roll Shop Craneman Sequence.

Moreover, the Seniority Lists for January 1985, July 1985 and January 1986, which were annotated with "PDP" after his name, specifically denoted that Prendergast's denial of promotion was permanent in nature. Since these seniority lists were posted pursuant to Article 13, Section 3, m.p. 13.12 gave Prendergast 30 days in which to challenge the accuracy of any of the posted lists. Having failed to do so with regard to these 1985 and 1986 postings, the Company argues that, therefore, Prendergast is barred under the contract from challenging the accuracy of the lists thereafter. Furthermore, that being the case, Article 13, Section 8-b precludes any challenge of the higher standing of those who have moved ahead of Prendergast.

Notwithstanding that argument, the Company also maintains that under all the circumstances, it is clear that Grievant's denial of promotion was permanent, not temporary, so that even if not barred from challenging the April 1986 listing, Article 13, Section 8-b precludes any challenge of the higher standing of those who have moved ahead of him as a result of his, in fact, having previously had a permanent denial of promotion.

The Union, on its part, claims that the seniority lists for 1985 and 1986 were never posted, and that prior to the events of April 1986, Grievant could not have known of the loss of standing on the seniority list.

Accordingly, his oral complaint of May 23, 1986 was within 30 days of this actual notice. As to the merits, the Union further argues that there is nothing in the permanent employment history of the Grievant to indicate any reason to believe that the denial of promotion was anything other than temporary. In support of this position, the Union maintains that following Grievant's failure of the MOL-Critical exam in 1978, there is no evidence that any action was taken to put Grievant on notice it was a permanent restriction.

Furthermore, Grievant was able to correct the cause of his denial as evidenced by his passing the Medical Department's MOL-Critical test in 1986.

Turning first to the question of what, if any, notice Grievant had, or should have had, as to the Company's listing of his restriction as being a permanent denial of promotion, there is no question that, at least beginning with the Seniority List for January 1985, and for the next two lists, this was clearly annotated next to his name, and he did not challenge the accuracy of this list within the prescribed time period, provided in Article 13, Section 3, m.p. 13.12. The Union's sole defense is the allegation that these Seniority Lists were not posted, and that Grievant had no basis for knowing that this was a permanent restriction until April 1986.

The record fails to support this contention. S. Lugosan, who became Supervisor of Administration in May 1983, credibly testified that she thereafter prepared and distributed the Seniority Lists, sending seven copies to the Shop. Moreover, the January 1984 seniority list was put on the Manpower Information System (MIS), and the form showed a permanent denial of promotion due to the medical restriction for mobile driver license. Three copies were prepared regarding Grievant, one sent to Personnel, one sent to the Grievant at the Roll Shop, and one placed in his file. Moreover, D. Mika, who served as General Foreman of the No. 5 Roll Shop in 1984 and 1985, testified that he posted the 1984 and 1985 seniority lists. He specifically recalled the 1984 list, because it consisted of several pages individually posted.

Grievant testified that he never got the 1984 MIS form, never saw the 1985 and 1986 lists posted in the Roll Shop, and that, in his experience, the posted seniority lists were never current. Grievant later testified that while he did check the board every couple of months, and saw seniority lists with his name and the date of the posting, he never saw a "PDP" in 1985 or 1986. In support of Grievant's testimony, the Union presented another employee in the No. 5 Roll Shop who said it was typical for a seniority list to remain posted for long periods of time before being updated, but could not say specifically that the 1985 or 1986

lists had not been posted. Finally, the Assistant Griever testified that during the processing of the instant grievance, he found nothing in Grievant's personnel file relating to denial of promotion.

While the Arbitrator finds it unlikely that, over the 18 month period covered by the seniority lists in 1985 and 1986, a posting indicating "PDP" next to Grievant's name was not posted for Grievant to see, it is clear from Grievant's own actions as well as actions within the Shop, that he had to be aware of the postings, which undermines the Union's position in the instant grievance. Thus, from 1976-1986, Grievant acted as though a "PDP" was attached to his sequence. He was never scheduled as a Craneman, never asked to be promoted, and never took steps to remove the medical restriction, which would have made him available for promotion to Craneman.

He indicated that at least until 1978, he did not want to be promoted, but when asked why he did nothing about the restriction until March 1986, he had no answer. However, the Arbitrator would note that as of March 1986, the Craneman job changed in a significant manner. In the past, you had to go up in the cab. After 1986, it became a remote control job, which would be done from the shop floor.

Even more damaging to the Union's position that Grievant had no reason to believe the restriction was anything but temporary, is the fact that several employees who were junior to Grievant in the Hooker sequence were moved past him during this period without any grievance being filed. For example, by July 1982, Delgado, an employee junior to Grievant by six years, had moved past him as a permanent Craneman. Similarly, the August 1983 listing shows that D. Grotte, seven years Grievant's junior, was moved to permanent Craneman. Moreover, the schedules would have showed that Krill and Colon were moving past him and working as Craneman, which paid more money than the Hooker position.

All of the above would have been clearly obvious from all postings following 1982, as well as from the weekly schedules, yet Grievant never filed a grievance. The Arbitrator finds the Grievant's lone explanation, that since he believed his restriction was only temporary, he could correct the problem whenever he wanted, to be rather hollow under all these circumstances.

Accordingly, regardless of how this record is considered -- arbitrability or the merits -- the Union has failed to show that the Company violated either Article 3 or Article 13 of the Agreement when employees Krill and Colon were given superior promotional standing numbers to the Material Transporter job ahead of Grievant Prendergast.

AWARD

For the reasons stated herein, the grievance is denied.

/s/ Herbert Fishgold

Herbert Fishgold

Arbitrator

Washington, D.C.

October 5, 1988