
United Steelworkers of America
Local Union 7896

and

Simonds Cutting Tools

Case No.: AAA 1130-1303-75

The Undersigned was appointed according to the Voluntary Arbitration Rules of the American Arbitration Association. The Hearing of this case was held at the Holiday Inn in Leominster, Massachusetts, on March 25, 1976. Mr. Thomas B. Jennings, International Office Staff and Mr. Christopher H. Joyce, Staff Representative, represented the Union. Mr. Edward N. Stoner, Attorney, represented the Company. The Grievant, Magloire Carle, testified for the Union. Mr. William G. Demchuk, President of Local 7896, Mr. Maurice D. Biron, Vice-President of Local 7896, Mr. G. Barry Whitcomb, Time Study Steward and Messrs. Warren Carroll, Edgar A. Holmes, William Lashua, and Alfred J. LeBlanc, Grievancemen, attended the Hearing for the Union. Mr. Jeffrey N. Wren, Manager of Industrial Engineering, testified for the Company. Mr. Vartkes K. Sohigian, Director of Industrial Relations, Mr. James B. McVeigh, Plant Personnel Manager, and Mr. Donald E. Anderson, Industrial Engineer, attended the Hearing for the Company.

The Hearing of this case was conducted according to the Voluntary Labor Arbitration Rules of the American Arbitration Association. The Hearing was closed on March 25, 1976.

ISSUE

The above named Parties submitted the following issue to the Arbitrator:

Does the Company have the right to deduct so-called overpayment of monies from an incentive employee's pay under the provisions of the Incentive Standard

Dispute Procedure in the Collective Bargaining Agreement? If not what should the remedy be?

PERTINENT CONTRACT CLAUSES

Article XI - Incentive

A. Wage Incentive Plan for Direct Employees - 25% Plan

1. A new standard hour incentive plan is to be developed at the Simonds Cutting Tools, whereby sound and proper incentives can be applied under the concept of incentive pay for incentive accomplishment.
2. The new incentive standards and work methods shall be established so that an average employee working at a normal incentive performance level will be able to average 25% incentive earnings over the standard hourly wage rate. However, there will be no ceiling on incentive earnings due to extraordinary ability, effort, or dexterity provided that the method is followed.
7. The Company shall establish incentive standards for all jobs under the new standard hour incentive plan by the use of accepted Industrial Engineering techniques and practices.
10. Incentive standards will be changed in the event of a methods change. A methods change occurs in the event of:
 - (a) mechanical or equipment improvements,
 - (b) changes in material handling devices,
 - (c) changes in crew size,
 - (d) changes in process control times or in machine speeds and feeds,
 - (e) changes in materials,
 - (f) changes in tools, dies, jigs and fixtures, grinding wheel specifications, holding devices or molds,
 - (g) changes in quality or engineering specifications,
 - (h) changes in gauges or measuring instruments,
 - (i) changes in machine complement,
 - (j) changes in production recording.

When one or more of the above changes occur, only the element or elements of work affected will be changed and only to the extent of such change.

Incentive Standard Dispute Procedure

1. An incentive standard may be challenged after it has been given a fair trial. The Company shall investigate the matter promptly, and the Union, upon request, shall have the right to use its official designated representative to investigate the matter in dispute, and shall have access to all the Industrial Engineering and payroll records relating to the dispute.
2. If a challenged standard is still in dispute after the above steps have been taken, the employee or employees affected, may file a grievance regarding such incentive standard; such grievance shall be adjusted under the grievance procedure of this Agreement.
3. Copies of all data used in determining the disputed incentive standard, including the earnings record of the employee or employees involved, shall be made available to the appropriate Union officials.
4. Any adjustment made in the incentive standard as a result of a grievance shall be retroactive to the date the employee started working under the incentive standard.
5. If no grievance is filed within sixty (60) days from the date the disputed incentive standard is utilized, such incentive standard shall be considered established and shall not be subject to protest.
6. In the event the grievance has not been settled in the manner hereinabove stated, it may be submitted to arbitration by the Union in the manner set forth in Article XII of the Agreement between the parties.

Article XII - Grievance And Arbitration Procedure

Section I. Settlement of Grievances

- B. A grievance is defined as any dispute between the Company and the Union, or between the Company and any of its employees, arising during the term of this Agreement and involving an alleged violation of the terms of this Agreement or an alleged failure to comply with the Agreement, or a dispute as to its interpretation or application.

BACKGROUND

Simonds Cutting Tools Company employs approximately five hundred (500) bargaining unit employees engaged in the manufacture of saws, knives and other types of cutting tools primarily for industrial use.

The first collective bargaining agreement between the Parties became effective on February 14, 1972. During the negotiation of the first contract, the Parties agreed to establish a new incentive system to replace an "outmoded" incentive system, to have the Company "rehabilitate" standards for each incentive job in the unit and to appoint a Union Time Study Steward to advise the Union's Grievance Committee in case of disputed incentive standards.

On September 10, 1973, the Company applied a new standard to the job at issue in the instant case. The Union noted that there was "some grumbling naturally" about the new rates but that it advised the employees to continue to operate the machines until the Union could determine if the new standards were loose or tight.

On September 21, 1973, Management increased the standard allowance to be used on one of the two machines in question. The Union stated that it filed no written grievance on the Grievant's behalf although the Grievant was "constantly after the Union to insist on a check study of the job." The Union did discuss the matter with the Company during the sixty (60) day period established for challenging a new incentive standard (see: Incentive Standard Dispute Procedure above) but the Company felt that the standard was appropriate.

When the Grievant continued to complain that the standard was too tight, the Union's Time Study Steward made an "informal" check of the rate on May 3, 1974 and concluded that there was no basis for the Grievant's challenge. When that did not satisfy the Grievant, the Union had its Time Study Steward run a full-day study of the job on August 20, 1974. The Time Study Steward, in a memorandum dated September 25,

reported to the Company and the Union that the standard was 6.5 percent too loose.
(Company Exhibit No. 1)

Later at a May 15, 1975 meeting attended by Staff Representative Joyce and the Union Grievance Committee, the Company informed the Union that, pursuant to the Company's interpretation of Paragraph 4 of the Incentive Standard Dispute Procedure (above), the Grievant would be required to repay all "overpayments" which he had received "retroactive to the date the employee started working under the incentive standard."

Shortly after that meeting, the Company called the Grievant "into the office" where the Manager of Manufacturing Accounting informed the Grievant that he had been overpaid for a portion of 1973 and all of 1974 in the amount of \$985.27. When the Company and the Grievant could not agree on the time period for repayment the Company began deducting approximately \$20.00 per week from the Grievant's pay "so that the entire amount would be repaid over the same period as it was improperly paid--approximately 52 weeks." (Company Statement, p. 6.)

The Grievant filed a grievance on June 9, 1975 contending "that the company is making improper deductions from my pay" and demanding "that the company stop this and restore the wages already deducted." (Joint Exhibit No. 2.) The Company replied in a Step Three answer on August 6, 1975 that "Deducting overpayments and correcting underpayments is consistent with past practice and the language and intent of the Incentive Standard Dispute Contract." (Joint Exhibit No. 2.)

THE COMPANY POSITION

The Company contended that the Grievant's oral complaint concerning his new incentive standard constituted the "first oral step" in the Grievance Procedure and constituted a grievance under the language of Paragraph 4 of the Incentive Standard Dispute Procedure. The Company noted that nothing in Paragraph 4 says that a grievance must be written.

The Company stressed that Paragraph 4 provides that any adjustment in an incentive standard as the result of a grievance must be made retroactive to the date the incentive standard went into operation. According to the Company the Arbitrator must apply the plain meaning of the Contract and enforce the Contract as it is written. The Company maintained that the Arbitrator must reject the Union claim that only those adjustments favorable to the employee must be made retroactive since the word "any" has no such restricted meaning. The Company claimed that the word "any" means "every" or "all." (Company Statement, p. 10.)

The Company also contended that it had been "quite reasonable" in arranging an extended installment payback period for the Grievant since the Company "would technically have been within its rights to require immediate repayment." (Company Statement, pp. 10-11.)

THE UNION POSITION

The Union contended that an employee's request for an incentive rate check can in no way be interpreted as a grievance. The Union further maintained that, since no grievance was filed until the Company decided to "take money away" from the Grievant, the Company has no right to invoke Paragraph 4 of the Incentive Standard Dispute Procedure.

According to the Union, moreover, the Incentive Standard Dispute Procedure is solely for the recourse of employees. The Union claimed that the Company is reading Paragraph 4 out of this employee appeal context and that it would be "ridiculous" for the Company to file a grievance challenging the equity of its own incentive standards. The Union stressed that, whereas the Company has the "full right" to establish an incentive system, to reset incentive standards if methods change, and to change an incentive standard within a sixty (60) day period, the employee's only recourse is to use the Incentive Standard Dispute Procedure.

The Union denied that there was any custom or past practice of collecting alleged "overpayments" to employees because of loose incentive standards although there have been many retroactive adjustments in favor of employees. The Union asserted that the Company was free to adjust the incentive standard by 6.5 percent in the instant case but that the Company had no right to require the Grievant to make retroactive repayments.

