A R B I T R A T I O N
N O. #10

ARBITRATOR'S AWARD

in the matter of

INLAND STEEL CO.
(INDIANA HARBOR WORKS)

AND

UNITED STEELWORKERS OF AMERICA
LOCAL 1010

on Grievances in

Stores Dept. - Refractory Labor

Steam Dept. - Boiler Washers and Mechanic

HERBERT BLUMER
(Arbitrator)

November 17, 1944.

REPORT OF ARBITRATOR

Introduction

An arbitration hearing on a grievance involving Refractory Labor in the Stores Department and a grievance involving Boiler Washers and Mechanical Men in the Steam Department was held on the premises of the Inland Steel Co., Indiana Harbor Works on October 25, 1944.

Herbert Blumer, appointed by the Regional War Labor Board, served as Arbitrator.

The Company was represented by:

F. M. Gillies, General Superintendent
W. A. Blake, Industrial Relations Department

The Union was represented by

N. Migas, International Representative
S. Krupsaw, Grievance Committeeman
G. Sopko, Grievance Committeeman
G. Harper, Formerly Grievance Committeeman
H. Powell, President of Local No. 1010

Two grievances were heard. Since they involved the same issues and items of interpretation, they will be considered together.

Nature of the Grievances

The first of the two grievances was signed by George M. Harper, Grievance Committeeman, and refers to the operation, Refractory Labor, in the Stores Department. This grievance reads as follows:

> "On Saturday, January 29, 1944, the men listed below were notified to report for work on Sunday, January 30, 1944, their day off. On Friday, February 4, 1944, they were notified not to report for work on their regularly scheduled work day. This is a violation of Section 7, Art. V, of the Contract. Therefore, these men should be compensated for this breach of the Contract:

Check No.	271 - Carrus Buggs	Check No.	13236 - Wm. Walton
" "	275 - Willard House	" "	13246 - Moses Cossey
" "	276 - Thomas Castro	" "	13251 - Elijah Buckner
" "	278 - Clarence Jacbosma	" "	13216 - Hayward Powell
" "	282 - John Juarez	" "	13221 - Clyde Smith
" "	284 - Lee Blaker	" "	13222 - Henry West, Jr.
" "	294 - William F. Johnson	" "	13227 - Jose E. Orozco
" "	295 - Seaser Fischer	" "	13229 - Pedro Hernandez
" "	297 - Willie Foster	" "	13233 - Jacinto Lopez
" "	13218 - Efren Cosillo	" "	13242 - Callentano Guzman
" "	13223 - John Tolbert	" "	13250 - Jose D. Guzman

The second grievance refers to the operation, Boiler Washers and Mechanical Men, in the Steam Department. It was signed by the Grievance Committee of the Steam Department. It reads as follows:

> "Nine boiler washers and one mechanic were scheduled to work Xmas day and were advised at the last moment to take day off. Also advised at the last moment to work Sunday, which is their regular work day. This is a direct violation of Article V, Section 6 and Section 7 (which has been arbitrated through the Merkl case). The exact condition exists in those cases, whereas on Management meeting with the Union, Management agreed that if conditions were as outlined to them, he would allow the double time pay for the seventh day not worked; due to disruption of schedule. The Union therefore requests that the company comply with the arbitrator's decision."

Position of the Union

1. In the two grievances which are submitted there is a clear violation of Article V, Section 7 of the Agreement. This section reads:

> "If, due to emergency or other proper cause, it is necessary to disrupt an employee's scheduled by working extra hours within the consecutive work week, he shall not be prevented from working the balance of his normal weekly schedule."

The aggrieved employees covered in the grievances had their schedules disrupted by being instructed to report for work on Sunday when their normal scheduled work weeks were Monday through Saturday.

In the instance of Refractory Labor the employees had a scheduled work week of six eight-hour days from Monday through Saturday. On Saturday of the given week, they were instructed to report for work on the following day; on the next Friday they were told not to report on the following day. In this manner they were deprived of working the last day of their normal work week - in clear violation of Section 7, Article V of the Agreement.

The same situation applied in the case of Boiler Washers and Mechanical Men. These same employees were on a scheduled work week of Monday through Saturday. On Saturday, December 18th, they were ordered to come out to work on the following day. On Friday, December 24th, they received orders to stay home the following day Christmas Day. According to their scheduled work week Christmas day was a regular work day in their work week. They were entitled to work that day in accordance with Article V, Section 7.

2. These grievances are identical in character and in issue with the grievance involving Frank Merkl which had been submitted to Arbitration. In that grievance the Union contended that the Company had violated the contract in disrupting Merkl's schedule by ordering him to report on his scheduled day of rest and not permitting him to work the last day of his scheduled work week. The Arbitrator's decision was in favor of the Union. The Arbitrator ruled that Frank Merkl should have been employed on the Saturday that he was laid off, since it was part of his regular scheduled work week, and ruled, further, that Merkl should be paid double time at the rate provided in the contract for the one day he was laid off.

Despite the Arbitrator's decision in the Merkl case, which should have been used as an interpretation on all further cases of a similar nature, the Management of some departments again began disregarding employee's weekly schedules. Employees who protested were told that the Arbitrator's decision had no meaning for other cases.

Accordingly, the Union has been forced to bring to arbitration the present grievances. The Union contends that since the issue was settled by an Arbitrator's award upon the basis of the fair presentation of the case by each party, the award should serve legitimately as the guiding precedent for other cases of the same nature. It is unfair and unjust that the Union should be required to resort to arbitration on each separate case that arises, when a decision has been fairly given on the issue present in all such cases.

The Arbitrator in the instance grievances is asked to rule on whether the Company may disregard the decision of an Arbitrator when that decision, after full and fair consideration of a grievance, gives an award on the issue involved in that grievance.

3. In the two grievances presently submitted not only was the action of the Company contrary to Article V, Section 7 of the Agreement, but it is not sustained by Section 4 and 6 of Article V, which the Company uses to support its contention. In both cases covered by the grievances, the aggrieved employees were given notice to report for work on Sunday only shortly before quitting time on Saturday and similarly were instructed not to report on the following Saturday late on the preceding day. The 48-hour notice prescribed in the contract was not given. Section 4 and Section 6 were never intended to give the Company the privilege of shifting schedules at will on such abrupt notice.

4. A presumed traditional practice is no valid ground for the Company's action. The Union, as one of its prerogatives, has been seeking to change many "traditional practices." Prior to the Arbitrator's award in the Frank Merkl case employees could do nothing but comply with instructions to report for work even though thereby their schedules were disrupted; and, hence, the Union could do nothing with reference to the practice until a ruling was received. The existence of the past practice by the Company, accordingly, can have no weight or significance in the present grievances.

Position of the Company

1. In the two grievances under consideration there was no disruption of the worker's schedule as outlined in Article V, Section 7 of the Agreement. A disruption of a schedule as referred to in this clause means a break in the continuity of the work of the employee during his work week with the consequence that he may stand to lose the completion of his normal work week; the clause is designed to guarantee to such an employee that he will be able to complete his normal work week and so not suffer a loss in hours.

In the instance covered by the two grievances the workers were able to work their normal work week of 48 hours. By asking the workers to report on Sunday, Management had merely shifted their scheduled work week from a Monday through Saturday schedule to a Sunday through Friday schedule. This cannot be regarded as a disruption of the scheduled work week; it is, instead, a revision of the scheduled work week.

2. Under the Agreement, the Company has the right to changing the schedules of employees. This is indicated in Article V, Section 4 which reads as follows:

"Determination of the starting time of daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time to suit varying conditions of the business. However, indiscriminate changes deemed necessary by the Company shall bemade known to the plant representatives of the Union as far in advance as posible."

This clause clearly lodges with the Company the right to make and change schedules, subject only to the fact that changes shall not be "indiscriminate." In the instances covered by the grievances, the changes in schedule made by the Company were thoroughly in accordance with its rights. Further, such changes were not indiscriminate changes, since the changes were required by working conditions.

3. Section 6, Article V of the Agreement recognizes that there may be circumstances wherein the Company may find in necessary to change schedules without being able to give the usual amount of notice. This section reads as follows:

"Schedules establishing the working periods of employees shall be posted where necessary for each week (or longer periods) in locations where they can be readily observed forty-eight (48) hours before they are in force, to better accommodate the off-period planning of employees. This practice of notifying men of their schedules prior to their last turn of work shall be followed as far as posible."

In the cases covered by the two grievances the Company did not act in bad faith- the situations were such that the Company was not able to give 48 hours notice. In the case of Refractory Labor it was not known for certain two days in advance that the work would be required on the Sunday, although intimations of such a possibility were given to the employees on the previous Thursday. There was a necessity of supplying brick to an open-hearth rebuild that had to be met; it is not always possible to predict the need for such repair work. In the instance of Boiler Washers and Mechanics it has been frequently necessary to work men on Sundays when operations required such work; frequently the immediate contingency of the task does not make it possible to schedule the work 48 hours in advance. This was true in the case covered by the grievance.

The Company submits that just such a possibility as occurred in the two cases is allowed for in the above clause in designating that the practice of 48 hours advance notice "shall be followed as far as possible."

4. The actions taken by the Company were not only legitimate and proper under the Agreement but are further in accord with the established traditional practice in the industry. It is not possible to have absolute working schedules in the steel industry since they must be adjusted to meet the contingencies of operation. Employees have recognized that conditions may demand that employees begin their work week on Sundays instead of Mondays. In the instance of Boiler Washers and Mechanics, for example, employees were called to work on Sunday some thirteen times in 1943; this was accepted as a normal procedure. It is only because under Executive Order 9240 a 48-hour week makes possible overtime for the extra day that the Union has brought up the issue in their grievances.

5. Workers have customarily understood that if they are asked to work on Sunday when they have had a scheduled work week of Monday through Saturday that it signifies that they are to work six days beginning with Sunday. They understand that they will get in their expected six eight-hour days of work and that they will not be expected to work the seventh day.

6. The Company cannot accept the award of the Arbitrator in the Frank Merkl grievance as being a just decision on the issue. The presentation of the Company in that arbitration case was poor and inadequate with the consequence that the Arbitrator did not have the full and proper material on which to make a decision.

Discussion and Analysis

Interpretation of the Agreement

The analysis of the issue raised by the two grievances turns on the interpretations of Sections 7, 4, and 6 of Article V of the Agreement between the Company and the Union:

Section 7, Article V of the Agreement reads as follows:

> "If, due to emergency or other proper cause, it is necessary to disrupt an employee's schedule by working extra hours within the consecutive work week, he shall not be prevented from working the balance of his normal weekly schedule."

The question is whether this clause is violated if an employee whose scheduled work week is Monday through Saturday works on a Sunday on Company instructions and is not allowed to work on the subsequent Saturday, as the seventh day of the work week.

In the judgment of this Arbitrator such an instance would be clear violation of Section 7, Article V. For example, for the Sunday work must be recognized as "extra hours" - hours extra to the employee's scheduled work week. Further, the extra hours worked must be recognized as a "disruption" of the employee's schedule. A schedule signifies to the employee that a designated period for working hours and days has been set for him and that there is, accordingly, a designated residue of off-period time on which he may plan and rely. To work an employee at times other than his scheduled hours and days would be to disrupt his schedule, for clearly neither his hours or work or his off-period hours would conform to what he had reason to expect. Since in the case being considered the hours worked on the Sunday are "extra hours" and since in working them the employees has had his schedule disrupted, he cannot be deprived of working the full amount of his scheduled work week for, otherwise, one would be taking a period of work which is not part of his scheduled work week and using that period of work to reduce his scheduled work week. As the Arbitrator understands it, this is precisely what Section 7, Article V of the Agreement forbids.

However, if workers who are assigned to work on Sunday are put, thereby, on a <u>new scheduled work week</u> running from Sunday through Friday, the Company would clearly not be obligated to employ them for the following Saturday. For, if their scheduled work week is Sunday through Friday the hours of work on Sunday could not be "extra hours." There would be no dis-ruption of their schedule and there would be no "balance of his normal weekly schedule" of which the employee was being deprived.

In the case of the two grievances, accordingly, the crucial question of fact is whether the aggrieved employees remained on their previous scheduled work week of Monday through Saturday or whether, in being instructed to report to work on Sunday, they were properly put on a new scheduled work week running from Sunday through Friday. If the first of these two possibilities is the case, the Com pany has violated Article V, Section 7; if the latter is true, the Company has not violated this section of the Agreement.

The determination of which of these two possibilities was the case requires interpretation of Sections 4 and 6 of Article V, Section 4 says that work schedules "may be changed by the Company from time to time to suit varying conditions of business;" the only qualification is that "indiscriminate changes shall not be made." Section 6 provides for the posting of the work schedules 48 hours before they are in force; however, "This practice of notifying men of their schedules prior to their last turn of work shall be followed as far as possible."

This Arbitrator recognizes that Section 4 and 6 of Article V o f the Agreement spell out clearly the rights of the Company. The Company has the right to change work schedules as it wishes, subject only (a) to the fact that such changes must be made to suit varying conditions of the business and (b) that they shall not be indiscriminate. Also, the Company is not bound absolutely to have notices of changed work schedules posted 48 hours in advance; it is required to do this under the Agreement only "as far as possible."

From the foregoing, it is clear that the Company has the legitimate right under the Agreement to shift workers whose work schedule is Monday through Saturday to a new work schedule of Sunday through Friday without 48 hours posted notice if it is not possible for Management to give such notice. Under such conditions employees would be on a new scheduled work week beginning with Sunday, and would have no right to employment on the following Saturday, as the seventh day of the work week. In such an instance, employees or the Union could have a valid grievance only if the changing of the scheduled work week were not done properly, that is, (a) if it was not made to suit varying conditions of business, (b) if it was indiscriminate, or (c) if it were possible for the Company to post notices in advance of the 48-hour period. Unless one or more of these three conditions were shown to exist, there would be no right for employees to be given a seventh day of work.

Application to the Grievances.

In the instant grievances, this Arbitator finds that notice whatsoever was given to the aggrieved employees that they were to go on a new work schedule of Sunday through Friday. There is no evidence in the testimony or in the records to show that they were told by a representatives of Management that in reporting for work on Sunday they were to go on a new scheduled work week. The Company merely assumes that the workers would naturally have "known" that their work on Sunday would be the first day of a new scheduled work week of six days - an assumption based on the fact that it has been customary in the plant from time to time to shift employees to work on Sundays with the understanding that they would work a normal week of six 8-hour days beginning with the Sunday. This Arbitrator cannot find that such an assumption is substantial proof that the aggrieved employees had "notice" that they were on a new scheduled work week, in reporting for work on Sunday. Indeed, the facts in the two grievances actually contradict such an assumption, for in both instances the Management had to instruct the workers late in the work week not to report on the seventh day of the [redacted] calendar week. If the employees had either been explicitly told that they were to go on a new scheduled work week, there would have been no necessity and no occasion to instruct them late in their work week not to report for work on the seventh calendar day. In the light of this action by the Company, this Arbitrator is obliged to recognize that in the two grievances under consideration the aggrieved employees were not notified in fact that their Sunday work meant going on a new scheduled work week.

Since the aggrieved employees were not given any notice that they were on a new scheduled work week, their regular scheduled work week of Monday through Saturday must be recognized as remaining in effect. Being on a Monday through Saturday schedule their work on Sunday would be "extra hours." Under this condition, the

action of the Company in instructing the aggrieved employees not to report for work on the following Saturday was a violating of Art. V, Section 7 of the Agreement.

The Application of An Arbitrator's Decision to Other Cases.

This Arbitrator has been asked by the Union to rule on whether an Arbitrator's decision must be accepted by the parties as binding for all cases similar in nature to that on which the arbitrator has made his decision. This Arbitrator would exceed his jurisdiction were he to rule on this issue, since the issue does not arise out of an interpretation of the Agreement and since it is not submitted by both parites to the Arbitrator for decision. This Arbitrator confines himself merely to a statement of opinion on the issue.

It is clear that the decision of an arbitrator is final on the specific grievance submitted to him for award. This is recognized in the Agreement -- See Article VI, Section 12. The question, however, is whether such a decision shall govern all other similar cases. In the judgment of this Arbitrator, aside from certain conditions which will be shortly specified, it is only fair and reasonable to expect an arbitrator's decision to apply to subsequent cases of the same nature. Otherwise, a distinct injustice would be done. There would be an unwarranted financial expenditure in having to carry each case to arbitration - an expenditure that would bear heavily on the party least able to stand it. Further, the refusal to apply the arbitrator's decision to similar cases leaves unsolved and unsettled the general problem covered by the decision. The parties have a legitimate right to expect the decision to clarify and stabilize their relations. Consequently, to force a union to carry repeatedly to arbitration a type of case already decided is unfair and unjustifiable; a company that would engage in such a practice would be guilty of bad faith, unreasonable action, and improper labor relations.

However, it must be recognized that there are circumstances under which it is proper and legitimate to question whether the decision of an arbitrator on a case should carry over to other cases of the same nature. First, an arbitrator may err badly in his judgment and made a decision which is manifestly unfair. It would be unreasonable to continue to apply such a decision to other cases. Second, there may be significant facts and considerations which were not brought to the attention of the arbitrator but which have an important bearing on the general issue. If such facts and considerations need to be taken into account, it would not be reasonable to continue to decide cases by an interpretation based on an inadequate or one-sided picture. Third, new conditions may arise which make the arbitrator's decision no longer reasonable for the type of cases for which it was given. It should be noted that in the field of law, legal interpretations may change significantly over a period of time in response to new sets of conditions. This can also occur in the case of arbitration awards.

Under circumstances, such as the three that have been stated, it seems to this Arbitrator, that is perfectly proper for either party to a labor agreement to request a new arbitration on a type of case that has been arbitrated previously. However, it should be incumbent upon the party that makes the request to make a reasonable showing that either (a) the previous decision of the arbitrator was clearly an instance of bad judgment; (b) that the arbitration decision was made without the benefit of some important and relevant sets of facts or considerations; or (c) that some new conditions have arisen that clearly question the reasonableness of the continued application of the decision. In the absence of such grounds, reasobably apparent, the refusal of a party to apply to a new case the arbitrators decision can only be interpreted, as stated above, as bad faith.

In his consideration of the present grievances this Arbitrator has not ignored the report or award given by a previous arbitrator in the Frank Merkl grievance. This Arbitrator believes that that report and award were unquestionably fair and thoroughly reasonable on the basis of the contentions of both parties. Seemingly, however, the arbitrator in the Frank Merkl case did not have introduced before him the question of (a) whether under Sections 4 and 6 of the Agreement the Company had the right to change the scheduled work week of employees without 48 hours posted notice and (b) whether that right was exercised properly in the case of the aggrieved employees. This Arbitrator has been required to face this question in his consideration of the present grievances; it is in this respect that the present arbitration report differs from that in the Frank Merkl grievance.

ARBITRATION AWARD

1. Since the aggrieved employees in the Refractory Department and in the Steam Department were on a scheduled work week of Monday through Saturday, and

2. Since the aggrieved employees did not have their scheduled work week changed in working on Sunday under Company orders and

3. Since their schedule was thereby disrupted by such Sunday work, and

4. Since the Company violated Art. V, Section 7 of the Agreement in not allowing the aggrieved employees to work the last day of their scheduled work week,

THEREFORE, this Arbitrator rules that the aggrieved employees should be paid double time at the rate provided in the contract for the day of work to which they were entitled and of which they were deprived.

HERBERT BLUMER

Arbitrator

November 17, 1944.