IN THE ARBITRATION BETWEEN:

INLAND STEEL COMPANY
(Indiana Harbor, Indiana)

and

UNITED STEELWORKERS OF AMERICA,
LOCAL 1010, CIO

ARBITRATION NO. #12 & 13

HEARING, MAY 4, 1945

REPORT AND DECISION OF ARBITRATOR

This Arbitration involves two issues which the parties, by mutual agreement, submitted to the undersigned for award. A hearing was held at Indiana Harbor, Indiana, on May 4, 1945, at which all parties were represented and fully heard. The Union was represented by Mr. Joseph B. Jeneske, International Representative, Mr. W. Leonard, Grievance Committeeman, Mr. W. Young, Chairman Grievance Committee, and Mr. H. H. Powell, Local President. The Company was represented by Mr. F. M. Gillies, General Superintendent, Mr. W. A. Blake, Industrial Relations Department, Mr. W. J. Walsh, Assistant Superintendent Tin Mill, and Mr. A. J. Castle, Superintendent Cold Strip Mill, Mr. J. Greenberg, Mr. P. Gudas, Mr. J. Wiergacz and Mr. L. Abramovitch appeared in person and were present during the hearing.

Issue Number one - The job status of employees, J. GREENBERG, P. GUDAS, J. WIERGACZ and R. HAMMOND as determined by the applicable contractual seniority provisions.

Facts - The persons involved in this dispute are employed in the Black Plate Division of the Tin Plate Department of the Company. In October 1942, because of a tin shortage, the operations in the Tin Plate Department were reduced from three turns to one turn. The reduced operations resulted in the demotions of the employees involved in this dispute as well as many others. In determining the identity of the personnel to be demoted the Company proceeded upon the theory that job seniority (Article VII Section 10) was the controlling type of seniority applicable to this situation, and upon that basis, ordered the various reductions in rank. The Union objected to that interpretation of the seniority provisions, contended that department seniority, rather than job seniority, should be considered, and claimed that twenty-two employees were employees were improperly displaced. The parties were unable to resolve this issue by availing themselves of the preliminary steps of the grievance procedure; and failing to mutually agree upon an impartial umpire, a joint request was directed to the National War Labor Board for the appointment of an arbitrator "to rule on the interpretation of Article VII - Seniority." On October 28, 1942 the Board appointed John Day Larkin as Special Mediation Representative.

The arbitration hearing was held on November 27, 1942, and on December 21, 1942, the arbitrator issued a decision which defined the seniority provisions as specifying departmental seniority and not job seniority, stating: "The arbitrator is of the opinion that the worker has every reason to expect that once a man has been promoted on the basis of his continuous service in a department and the record shows that he has the ability and physical fitness to do the work, he

shall not be displaced by one who has entered the service of that department at a later date than his entrance."

The Union assumed that the Larkin decision would provide the Company with an adequate precedent for the replacement of the twenty-two individuals who had allegedly been improperly demoted.

The Company, however, took the position that the Larkin decision merely determined one specific phase of the seniority provisions, and did not adjudicate the entire seniority clause; that neither were the merits of the respective claims of the individual employees included in the submission, nor were they considered by the arbitrator, and that on the authority of the "ability" to perform the work" factor "Article VII, Section 1) its previous shifting of personnel was justifiable.

During the period from January 2, 1943 to October 11, 1943, the parties attempted to reach an agreement respecting the interpretation and application of the Larkin decision, but failed to resolve their differences. A Commissioner of the United States Conciliation Service conferred with the parties, the dispute was not settled, and on November 9, 1943, the case was certified to the National War Labor Board as Case 111-7897-D. Upon referral to the Sixth Regional War Labor Board, the new Case Committee held a hearing on March 28, 1943, to show cause why the arbitration award should not be put into effect.

Subsequent to the hearing, the New Case Committee referred the matter to Dr. Larkin and on April 1, 1944, a meeting was held, attended by both parties and Dr. Larkin and Mr. Samuel Edes, Director of Disputes. At this meeting Dr. Larkin advised the parties to solve the matter through the presentation of specific grievances. On April 19, 1944, the Union filed written grievances on behalf of the four employees involved in this instant arbitration dispute.

The four grievances were not resolved and on October 9, 1944, the Union requested the Board to issue a Directive Order in Case 111-4897-D. The Board appointed Mr. Theodore Brimm as its Hearing Officer, and on January 27, 1945, Mr. Brimm issued his report which stated in part as follows:

> "As mentioned before, grievances are still pending involving the proper classification of four employees. The Company in each instance raises the question of 'equal skill and ability.' Under such circumstances, these matters properly should be submitted to arbitration in line with Board policy of ordering arbitration to settle a particular girievance involving interpretation or application of the terms of a collective bargaining agreement which has not been settled in the preceding steps of the grievance procedure."

On March 12, 1945, the Board issued its Directive Order specifying that the unresolved grievances be submitted for determination by final and binding arbitration. Pursuant to this Order the parties stipulated that the undersigned by appointed as Arbitrator herein.

During the resumption of full operation in the Skin Mill in 1943, eighteen of the twenty-two persons, whose displacement the Union had initially resisted, were reinstated to the jobs formerly held by them, and they withdrew their objections to the demotions. As a result of these expanding operation, J. Weirgacz

was on July 1, 1943, reinstated to his former job of flying shears inspector, and Paul Gudas was on August 16, 1943, promoted to his former job of Skin Mill Roller. On July 7, 1944, the Company conceded that the relative performance of R. Hammond and one Herbert Tolman were substantially equal, and on the basis of unit seniority promoted R. Hammond to Roller, and demoted H. Tolman to Catcher. As a consequence of this action, the Company reimbursed R. Hammond with the appropriate wage differential between the respective jobs, such payment being made retroactive to April 19, 1944, the date of the filing of the written grievance.

Position of the Union

1. That Dr. Larkin's interpretation of the seniority provisions support the contention that the four individuals were improperly demoted.

2. That each of these persons should be reimbursed for the difference in wages during that period of time which elapsed between their demotions and their reinstatement.

Position of the Company

1. That the Larkin decision did not adjudge the merits of this dispute.

2. That the Company's decision to demote these individuals was based upon its evaluation of the relative equality of these persons with respect to their ability to perform the work.

3. That it is significant that of the hundreds of dislocations and job changes occasioned by the reduction and subsequent expansion of forces in this department, only these grievances remain unresolved.

4. That by failing to promptly appeal from the first denial of these grievances, the Union is barred from seeking further relief.

5. That the previous reinstatement of Gudas and Wiergacz is not indicative of their ability to perform thework, but rather reflects a condition resulting from a tight labor market.

6. That any decision tothe effect that its treatment of the seniority rights of the employees in this department has been erroneous, will only promote confusion and unhappiness among large numbers of workers, invite other grievances, and deprive management of its fundamental right to determine that for the welfare of the Company and employees working for it, it will at all times have on its jobs the workers best suited therefor.

Discussion.

The contractual provisions pertinent to the adjudication of this dispute are the following:

Article VII
Seniority

Section 1. It is understood and agreed that in all cases of promotion or increase or decrease of forces the following factors should be considered.

(a) Length of continuous service.

(b) Ability to perform the work.

(c) Physical fitness.

It is further understood and agreed that were factors (b) and (c) are relatively equal, length of continuous service shall govern. For 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 do not establish a differential in relative abilities of two employees a reasonable trial period of not less than thirty (30) days shall be allowed the employee with the longest continous service record.

Personnel Records

Individual records of each employee shall be maintained in the department in which the employee is active. These records will maintain an over-all history ofthe individual's service in that department and periodically a rating of efficiency will be given each employee. These ratings have much influence on the "Ability to perform the Work" clause of this section.

****

Section 2. The application of seniority in promotions, increases or decreases of force, shall be strictly on a departmental basis. Plant seniority shall apply only on those subjects which pertain to all employees alike, namely, vacations, reservice labor status, etc.

Demotion

Section 4. When there is a decrease in force necessary, the following procedure shall be in force:

(a) Employees having no seniority shall be laid off. (Probationary employees).

(b) The hours of work shall be reduced to twenty-four (24) hours per week before anyone else is laid off.

(c) Should there be further decreases in force, employees will be laid off according to the seniority status as defined in Section 1, in order to maintain the 24-hour week.

Should there be any dispute involving the application of these steps it shall be subject to settlement through the normal grievance procedure.

Job Seniority

Section 10. In cases of demotion, employees shall drop back in status of occupation in the same order that their promotions took place. Employees demoted be-

cause of lack of business or reduction of forces or other causes will be demoted in the reverse order of promotional sequence provided their term of service in this promotional line exceeds that of the subordinate employee whom he is to displace.

Article VI

Adjustment of Grievances

Section 7. Grievances not appealed from the decision rendered in writing in any of the four steps specified herein within ten (10) working days from the date of such decision shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal.

The first question to be determined is whether Article VII, Section 1 grants to Management the sole and exclusive prerogative of evaluating factors, (b) ability to perform the work, and (c) physical fitness. Let us assume that this section was worded as follows:

"In all cases of promotion, transfer or of increase or decrease of forces, the following factors shall be considered, and where factors (b) and (c) are in the opinion of the Company, relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Ability to Perform the work.

(c) Physical fitness."

It appears clear that in this hypothetical illustration the relative equality of the designated factors is conclusively decided by the opinion of the Company. With a clause of this type it is apparent that the slightest difference in training, education or ability would be a sufficient basis for the Company to predicate its opinion of the lack of relative equality. The words "relatively equal" are broad in concept, and susceptible of unlimited construction. The sole criterion is whether, in the opinion of the Company, there is relative equality among the eligible employees. The Union's right to challenge the exercise of such opinion is limited only to a flagrant situation, and even there a doubt may exist as to whether the right would be inherent.

It is reasonable to conclude that the same significance may be fair inference be attached to Section 1 in the instant case? It is true that the paragraph to Section 1 in the instant case? It is true that the paragraph grants to Management the right to judge the relative equality of factors (b) and (c) provided that this prerogative is not made an instrumentality for discriminating against any Union member. However, the absolute right to make such determination is further qualified by the requirement that, in those instances where the evaluation of the Company is contested, a trial period of at least thirty days shall be granted to the employee with the longest continuous service record, where the personnel records do not establish a differential in relative abilities. These provisions appear to provide a sound basis for differentiating the seniority clause in this case from the example hereinbefore mentioned.

Accordingly, the undersigned interprets this section as follows:

1. That, the Company has the initial right and duty to determine whether or not factors (b) and (c), when applied to comparable employees, are relatively equal. If in the judgment of the Company relative equality exists, then the employee having the longest appropriate seniority credit shall be preferred.

2. That, if the Company decides that comparable employees are not relatively equal, and no objection is made to such evaluation, the personnel records shall be examined to ascertain whether they establish a differential in relative abilities.

3. That, if the personnel records do not establish such differential, then a reasonable trial period of not less than thirty days shall be allowed the employee with the longest continous service record.

With respect to the type of seniority established by Article VII, it is clear that the Larkin decision is controlling. That decision interpreted the Article to provide for Departmental Seniority and not Job Seniority, and, therefore, must be accepted as a final resolution of the apparent conflict between the provisions of Section 2 and Section 10 of Article VII.

Subsequent to the decision, the employees in the Black Plate Division of the Tin Plate Department, decided that the application of the Larkin decision required a precise definition of the word "departmental." In July, 1943, these employees voted on a choice between two types of seniority namely, Black Plate Seniority (service within the entire division) or Unit Seniority (service on a particular unit within the Division, such as Skin Mill, Washers, Shears, etc). The majority of the employees voted in favor of Unit Seniority, and, since July 19, 1943, Unit Seniority has been in effect. Such acceptance of "Unit" seniority as a clarification of "Departmental" seniority is important when related to the time when the instant grievances may be said to have become effective.

The Union has strenuously urged that these grievances should be considered as having been pending since October, 1942, at which time the demotions were initially challenged. The testimony at the hearing indicated that, at the time of the reduction in operations, the Union complained that the seniority provisions were improperly applied, and, by reason thereof, twenty-two persons were adversely affected. There was no clear showing that the names of the men who were thus involved were then presented to the Company. The denial of the Union's claim precipitated the Larkin arbitration. The sole issue then submitted to arbitration was the interpretation of Article VII. That this issue did not encompass the determination of the improper displacement of particular employees is clearly shown by the following excerpts from the transcript of proceedings:

Page 33

"Arbitrator: You say there are a number of individual cases constantly arising. Unless you take each one of these and made a case separately, how can we determine by a general interpretation, how can we settle these things?

Mr. Lieberum: Consider the individual case until you do make an interpretation of the rule you are going to apply to each individual. Whenever that rule is made, the application to the individual case will be a simple matter between the Company and the Union after the rule is established. ***

Page 34

Mr. Lieberum: The problem we are confronted with, I think Mr. Gillies will agree, is the application of seniority within a department, shall it be based upon a man's seniority, on the job he has already or shall it be based upon the length of time a man has been in the department or in this sequence that we have already agreed upon between the Union and the Company. That I believe is the basis of the argument. ****

Page 71

Mr. Lieberum: The only thing that we argue about here is whether the factor (a) I believe it is length of continuous service, shall be based on a job basis continuous service, or a departmental continuous service, a device within a promotional sequence.

Page 65

Mr. Krupsaw: The Union stated that they are discussing, they want a contract protection of the demotions whereas the Management is trying to confuse the issue in the record by saying the Union wants an advancement of particular men. That was not the discussion at all."

The same conclusion was reached by Hearing Officer Brimm when he stated in his Report:

> "It was made equally clear at the hearing and from an examination of the transcript of the proceedings before the Arbitrator that in no instance in such proceeding was a specific grievance presented in the name of an individual worker, but the questions of promotions, demotions and transfers were discussed in general terms by groups and departments."

The undersigned is of the opinion that there are several reasons why the grievances in the instant case should be considered to have been filed as of April 19, 1944, rather than at any earlier date. Article VI, Section 3, provides that the grievance be reduced to writing if it is not adjusted by the foreman. Section 7 states that unless the decision rendered in each of the first four steps is appealed within ten days, the grievance shall be considered settled on the basis of the decision last made. To treat the instant grievances as having been filed in October 1942, would violate both of these sections since the grievances were not reduced to writing until April 19, 1944, and since no appeal was taken from Mr. Gillies' denial in October, 1942, of the alleged improper demotions.

The submission of the issue involved in the Larkin decision cannot be construed as an appeal of the grievances which are the subject of this dispute.

The interpretation of the contract and the determination of whether individual employees are within the scope of that interpretation are two distinct matters; and separate grievances covering each of these subjects should have been filed. Those grievances could have been filed either before or immediately after the Larkin decision. It is reasonably clear that the issue submitted to Dr. Larkin was in the nature of an exploratory mission, undertaken by both parties in an effort to remove contractual ambiguities. The particularization of the individual employees who were most vitally concerned with the outcome of that arbitration was not considered to be of immediate importance. It was contemplated that the individual cases would be taken up after the seniority provisions had been construed.

That the situation was susceptible to change is illustrated by the fact that increased operations taking place shortly after the decision was rendered resulted in eighteen of the twenty-two aggrieved employees being replaced on their former jobs. Those eighteen employees withdrew their objections to the demotions. Accordingly, the undersigned concludes that the effective filing date of the grievances in this instant arbitration is April 19, 1944.

It must be conceded that, if the Union's position on the issue was sustained, the employees who are involved in this case would be entitled to redress in the form of back pay for the difference between their rates retroactive to the date of the filing of the grievance. This principle has been a well accepted practice at this plant, and is exemplified by the case of R. Hammond who was reinstated to the position of Roller on July 10, 1944 and awarded back pay retroactive to April 19, 1944. If, however, on the date of filing the grievance, the employees were already placed back on their jobs, the objective of the grievance has been achieved and no retroactive pay is then due.

Joe Wiergacz was replaced on his job of F. S. Inspector on July 1, 1943, and Paul Gudas was promoted to Roller on August 16, 1943. Both of these employees, therefore, were replaced on their jobs prior to the filing of the written grievances, and the basis for any retroactive award is thereby eliminated.

The foregoing observations dispose of the grievance of HAMMOND, WIERGACZ, AND GUDAS. The remaining objector, GREENBERG, must be separately considered since he alone has thus far failed to secure the job from which he was demoted.

It will be remembered that since July 19, 1943, Unit Seniority has been in effect throughout the Black Plate Division. Since it has already been determined that the effective date of the filing of GREENBERG'S grievance was April 19, 1944, it is obvious that the measurement of the respective seniority standings between Greenberg, and the two employees, alleged to be junior to him inpoint of service, namely LEON BROWN and J. SCHREINER, must be made on the basis of UNIT Seniority. An examination of the seniority records discloses the following:

	TIN MILL DATE	UNIT DATE
GREENBERG	9/33	5/36
BROWN	3/36	6/36
SCHREINER	12/35	3/36

Thus, it is apparent, that although Greenberg's seniority in the Tin Mill is greater than the other two employees, his UNIT seniority is less than Schreiner's, but greater than Brown's. The Company's judgment that the relative abilities of the two employees, GREENBERG and BROWN, are not equal is challenged, and, therefore, it is necessary to determine whether the personnel records establish a differential.

These personnel records are made up of specific entries under the general titles of "Reprimands," Disciplines," "Safety Warnings," "Accidents" and "Absences" and also indicate the employees' efficiency ratings. These ratings are graded consecutively from 1 to 5, grade 5 being the top rank.

The Company pointed out that its judgment of an employee's ability is not limited solely to matters contained in the personnel record, but such factors as tonnage, earnings and quality of work exert muchinfluence. The Company maintained that such an attitude is proper, because these elements are more truly indisative of an employee's performance than are the personnel records which deal primarily with conduct.

The undersigned is appreciative of the fact that the appraisal of relative abilities between two employees may require taking into account many intangible details. However, in this case, the contract specifies that the differential in relative abilities must be established by the personnel records. This language precludes the possibility of considering any source material other than the personnel records.

The most significant item in the personnel record is the rating of efficiency. The contract states: "These ratings have much influence on the 'ability to perform the work' clause of this section."

This statement expresses the intention of the parties to have these ratings reflect the proportionate worth of each employee's performance. For the purpose of this dispute these ratings must be accepted in the form in which they existed at the time of the filing of the grievance, and must be uninfluenced by verbal modifications.

The most recent efficiency ratings of these two employees are the following: GREENBERG 12/41 - 3; BROWN 11/41 - 4. Accordingly, the personnel records inthis case do establish a differential in relative abilities, and, therefore, the Company was not required to grant GREENBERG, as the employee with the longest continuous service record, a trial period.

Award - That employees, J. GREENBERG, P. GUDAS, J. WIENGACZ, and R. HAMMOND are properly classified in the respective jobs now held by each of them. That the claim by each of these employees for back pay is, in each case, denied.

Issue Number Two - Shall LOUIS ABRAMOVITCH be awarded back pay for the period from March 16, 1944 to July 11, 1944.

Facts - Louis Abramovitch, a Feeder in the Rolling Division of the Cold Strip Mill has been an employee of the Company since June, 1933. In August 1942, the Cold Strip Department was undergoing a reduction in forces, and many of the employees were either demoted, laid off or given leaves of absence.

When a notice was posted on the Bulletin Board informing the employees that operations would be reduced to one crew, Abramovitch became disturbed about the posibility of his being unemployed and he lined up another job outside of the plant. Abramovitch testified that he contracted Mr. C. R. McLeod, the general foreman, and requested a leave of absence; that Mr. McLeod acceded to the request, gave him a separation slip, and told him, 'It is good for six months, two years or five years.' The Company denied that Abramovitch had contacted McLeod, and stated that he came to the Chief Clerk's office and requested a quit slip, which was given to him.

The Company introduced into evidence a copy of the separation slip which reads as follows:

INLAND STEEL COMPANY

Indiana Harbor, Indiana 8/31/1942

Paymaster: -

Please settle with LOUIS ABRAMOVITCH, Number 14113 in full to 4:00 P.M. 8/27/42.

Check reasons for leaving.

Laid off: At own request

Quit:

Discharged:

(Signed) A. J. Castle
Superintendent.

On March 16, 1944, a grievance was filed requesting that Abramovitch who had not worked at the plant since August 1942, be reinstanted to his former job. In processing the grievance through the contractual grievance procedure, the Department Superintendent and the Superintendent of Industrial Relations decided that Abramovitch had quit his job, and, therefore, had no reinstatement rights, but that if he resumed his employment he would do so as a new employee. The case was appealed to the General Superintendent (Mr. Gillies) who reversed his subordinates, and ruled that Abramovitch should be reinstated and given credit for his previous service. Pursuant to this ruling, Abramovitch was reinstated on July 11, 1944. At the time of his reinstatement, the Departmental Grievance Committeeman and the Departmental Superintendent agreed that no claim would be made for back pay.

On October 11, 1944, the following grievance was filed on behalf of Abramovitch:

"A grievance was filed on March 16, 1944 to reinstate the above employee. He was not reinstated until July 11, 1944. We believe this date of seniority should be the date of original grievance, March 16, 1944."

On October 17, 1944 the following decision was rendered: 'It is agreed to change the seniority date of the above employee to March 16, 1944.'

Subsequently, on January 23, 1945, a grievance was filed requesting that Abramovitch receive back pay from March 16, 1944 to July 11, 1944.

During this period Abramovitch received periodic employment and alleged that he earned the following:

Gorden Baking Company	$191.13
Indiana Harbor Belt R.R	100.00
	$ 291.13

This grievance, afterbeing processed through the preliminary steps of the grievance procedure, remained unresolved, and, by agreement of the parties, was submitted to the undersigned for determination/

Position of the Union

1. That Abramovitch should receive back pay from March 16, 1944, to July 11, 1944, because the delay in granting his grievance for reinstatement is chargeable to the Company.

2. That the Company's decision to reinstate Abramovitch reflects the merit of the grievance at the time of filing.

3. That had Abramovitch been reinstated, at or about the time the grievance was filed, he would have been in the employ of the Company during the period for which back pay is now requested.

4. That it has been the policy at this plant to make the adjustments on rates, found to be erroneous, retroactive to the date of filing of the grievance.

Position of the Company

1. That Louis Abramovitch voluntarily quit his employment and thereby terminated his previous credited service.

2. That the General Superintendent erred in reinstating Abramovitch with credit for accumulated seniority.

3. That, at that time of Abramovitch's reinstatement, the Departmental Grievance Committeeman waived any alleged claim for back pay.

Discussion

The contractual provisions pertinent to this issue are the following:

Article VII

Section 4. When there is a decrease in force necessary, the following procedure shall be in force:

(a) Employees having no seniority shall be laid off. (Probationary employees).

(b) The hours of work shall be reduced to twenty-four (24) hours per week before anyone else is laid off.

(c) Should there be further decreases in force, employees will be laid off according to the seniority status as defined in Section 1, in order to maintain the 24 hour week.

* * * *

Section 5. Credited service shall mean an employee's service at the Company's plants since the date of his last hiring.

Continuous service shall mean the credited service period minus any period of interruption exceeding ninety (90) days, excepting absence with leave, or sickness or disability, proof of which has been established with the Department of Industrial Relations.

Credited Service shall be terminated as follows:

(a) By discharge for cause
(b) Resignations
(c) Absence exceeding ninety(90) days when due to leave of absence.
(d) Absence exceeding two years due to industrial depression.

The evidence is conflicting with regard to the nature of Abramovitch's separation from the Company in August 1942. The Union contends that he requested and received a leave of absence of indefinite duration. The Company maintains that he voluntarily quit. The surrounding facts and circumstances must be taken into account in resolving this conflict.

In the first place, the separation slip states that he was "laid off at own request." It is very difficult to perceive any real distinction between "laid off at own request" and "Quit." To the undersigned both of these expressions appear to be alternative ways of saying the same thing. If he was laid off because of depressed business conditions, the words "at own request" would not have been inserted.

On the other hand, there are several positive indications which negative the assumption that a leave of absence was granted to him. Article VII, Section II, requires that an employee, requesting a leave of absence, make application in writing. No evidence was introduced to prove that this had been done. Furthermore, the same section states that a leave of absence is limited to 90 days, and if an additional leave is required, application must be made for an extension. Again, there was no proof of such action. Also, it appears obvious that if the Company had considered that Abramovitch had been granted a leave of absence, he would not have been given a separation slip, which by its terms is utilized only in cases of quits, lay-offs and discharges. An additional factor indicative of a "quit" is found in the incident wherein the Company and the Union agreed upon the grouping of separated employees in order to

determine their reinstatement rights, and, without objection or comment from the Union, Abramovitch's name was included among the names of those employees who had voluntarily quit. For these reasons the undersigned has concluded that Abramovitch's separation is more reasonably construed as a quit rather than a leave of absence.

The same conclusion was reached by the Department Superintendent and the Superintendent of Industrial Relations in processing Abramovitch's grievance seeking reinstatement. Mr. Gillies, however, reversed their decisions.

He stated that he rationalized such action on the theory that it was preferable to permit employees, who had reasonable expectations either of being laid off, or of being demoted to lower paid jobs, or of working a reduced workweek, to be granted a leave of absence in order to secure full employment outside of the plant, even though such attitude amounted to a departure from the literal wording of the contract. Mr. Gillies also stated that before making his decision he was assured that back pay would not be claimed. If it can be said that Abramovitch's reinstatement was achieved as a result of a gratuitious act on the part of the Company, as distinguished from a right which was secured to him by the terms of the contract, then it follows that his reinstatement should be effected upon those terms which the Company sought fit to apply.

Some importance must be attached to the uncontradicted testimony of the Company that the Grievance Committeeman made a representation that back pay would not be requested. Abramovitch's reply to this assertion is enlightening:

Transcript of Proceedings - Page 16 - Abramovitch: That is the decision of Castle and the grievance man. They made it without consulting me, and he told me about it, the grievance man did, and I said that didn't go that I was entitled to it. Castle asked the grievance man if it involved back pay and he said "no", and Castle signed. The grievance man would not take it back. He said he didn't go back on his word."

The grievances filed on October 19, 1944, merely requested the Abramovitch's seniority date should be March 16, 1944. Back pay was not mentioned.

If a request for back pay was considered to be the normal consequence of the allowance of this grievance, a statement to that effect should have been inserted so that the Company would have a fair opportunity to evaluate the entire demand.

The fact that this element was not mentioned, strengthened the Company's belief that back pay was not involved. It is very likely that if a request for back pay had been inserted in that grievance, the Company would have resisted its allowance.

Award - That the claim of Louis Abramovitch for back pay for the period from March 16, 1944 to July 11, 1944 is denied.

Respectfully submitted,

Harold M. Gilden, Arbitrator

June 7, 1945.