ARBITRATION AWARD NO'S.
#15 - 16 - 17

In The Matter Of

INLAND STEEL COMPANY
Indiana Harbor, Ind.

And

UNITED STEELWORKERS OF AMERICA, CIO
LOCAL NO. 1010
Indiana Harbor, Indiana

Covering

GRIEVANCE NUMBERS

1511
1337
1410
1487 - You have this one already

HERBERT BLUMER
Arbitrator

ARBITRATION REPORT AND AWARD

Introduction

The parties to these arbitration proceedings are the Inland Steel Company. Indiana Harbor, Indiana and the United Steelworkers of America, CIO, Local 1010, Indiana Harbor, Indiana.

An arbitration hearing was held before Herbert Blumer who was selected by the parties as impartial umpire in accordance with the August 5, 1942 Agreement between the parties. The arbitration hearing was held on June 16, 1945 in the offices of the Company at East Chicago, Indiana.

The grievances heard were numbers 1511, 1487, 1337 and 1410.
(Award numbers #15-14-16 & 17.)

The Company was represented at the hearing by

F. M. Gillies, General Superintendent
W. A. Blake, Industrial Relations Department
A. J. Cochrane, Sup't. Plant I Mills
O. T. Bradley, Sup't. Transportation Department
K. J. Schneider, Sup't. Stores and Refractories Dep't.
A. Ulbrich, General Foreman, Refractories Dep't.
C. Heine, Foreman, Refractories, Department

The representatives of the Union were

J. Jeneske, Field Representative
W. Young, Chairman, Grievance Committee
S. Krupshaw, Grievance Committeeman
J. Dickingson, Grievance Committeeman
G. Sopko, Grievance Committeeman
S. Francis, 36" Blooming Mill Millwright
S. Fisher, Refractory Labor
G. Stephens, Refractory Labor
H. Howell, Refractory Labor
J. Anguiano, Refractory Labor

GRIEVANCE NUMBER 1511

1. Nature of the Grievance.

The grievance reads as follows:

> "On December 20, aggrieved asked his foreman for Sunday, 12-24-44 off. Foreman told him that he didn't make up the schedule. Aggrieved asked the superintendent for the day off, the superintendent declined. Aggrieved then said he would take the day off anyway and did. When he reported back to work there was a red card in his rack stating that he was to report to his superintendent before going back to work. This he did and was given a six working day layoff.
>
> The Union feels that this is unfair for this is only the second time this man has laid off in fourteen months, a record that we believe will compare favorably with ninety percent of the workers throughout the plant.
>
> The Union is requesting pay for time lost by this man due to this compulsory layoff."

This grievance was entered on December 28, 1944. It is signed by F. Slater. The aggrieved employee is Sigmund Francis, Check No. 1815.

2. Position of the Union.

There was nothing improper in the conduct of the aggrieved employee to justify the imposition on him of a six day layoff. This employee had asked for time off for his turn on December 25, 1944. This request was made well in advance, on December 21, 1944. The Superintendent of Plant No. 1 to whom the employee was referred by the foreman refused to give the employee his request, despite the fact that the employee had been off only once in some fourteen months. Feeling that his seniority and his faithful record of being on the job warranted him to have the day off, this employee did not report to work on Dec. 24th after having told Management that he would not report on that day. The fact that this employee did not work on Dec. 24th after having told Management that he would not report on that day. The fact that this employee did not work on Dec. 24th did not require Management to rearrange the schedules of any other employees.

It merely meant that the unit worked short-handed, which is a frequent occurrence. Since the employee had a long and impressive record of always being on the job, since he addressed a reasonable request to Management and gave the Management ample notice of his intention to be off, since other workers have taken time off, and since his absence from work did not impose on Management any unusual difficulty, there was no equitable ground to punish him with a six day layoff for his failure to report.

There is nothing in the Agreement which gives the Company the right to take this type of disciplinary action. Clauses in the new Agreement make it clear that an employee who takes time off is assured of working the balance of his schedule if he notifies the proper people within the specified time. This indicates that it is not the policy of the Company to give employees time off as discipline for not reporting for work as scheduled.

The Agreement (Article V, Section 6) gives Management the right to rearrange schedules on 48 hours notice. By the same token an employee should have the right to give 48 hours notice of the fact that he will not be able to report on a given turn for which he is scheduled. The aggrieved employee gave such notice.

The action taken by Management is an act of discrimination against the aggrieved employee. The Superintendent used as an excuse for not granting the employee's request the fact that he had not reported on the previous Sunday (Dec. 17). However, the employee had justifiable personal reasons for not being able to report on Dec. 17. In addition, that absence had been the first in some fourteen months of regular attendance on the job. The Superintendent's action stems from the argument between the two when the aggrieved employee made his request. It is to be noted that the aggrieved employee was an active Union committeeman. His diligence in this work is known to have incurred the displeasure of the Superintendent. This ill feeling on the part of the Superintendent, heightened by the argument between the two, is the real reason for the disciplinary layoff.

3. Position of the Company.

The failure of the employee to report to work on his scheduled turn on December 24, 1944, disrupted the working schedule of Management and imposed a hardship on the other employees in the unit. The turn for which the employee failed to report was a repair turn. Such a turn is of vital importance because it is the time when essential repairs, necessary for the operation of the plant, have to be made. The aggrieved employee by virtue of being a head millwright plays an important part in such repair work. Consequently, his failure to report set a handicap in doing the necessary work. It was necessary to rearrange the schedules of the other employees and complaints were made by some of them.

This employee had failed to report on his regular turn on the previous Sunday (Dec. 17) and had not given any reasonable explanation of his absence. Management gave the employee a reprimand notice for this absence and informed him that a future offenee would result in disciplinary action. The employee thus knew that a repetition of his offense would warrant disciplinary action.

It is the policy of Management to give time off when requested insofar as it is able and insofar as reasonable ground are given for the anticipated absence. The employee had no satisfactory reasons for desiring time off on Dec. 24th when he spoke to the Superintendent. In the absence of such good reasons and in view of the fact that his absence would handicap and disrupt the work in the unit Management had proper and legitimate grounds in refusing his request.

Management has the right under Article XI - Plant Management - to administer discipline for an offense such as that committed by the aggrieved employee. It has been the policy of Management to reserve the right to take disciplinary action in such cases. The Company submits in proof copies of reprimand notices given to various employees in this and other units. These notices show that the given employees were warned that a repetition of their failure to report would be subject to penalty. The Company also submits copies of disciplinary actions taken against certain employees because of their failure to report on their regularly scheduled turns.

4. Discussion and Analysis.

There are no provisions in the Agreement between the parties which cover specifically the matter of disciplining an employee because of his failure to report on a turn for which he is regularly scheduled. However, implicit in the broad powers given in the Management clause is the right of the Company to take disciplinary action in an action such as is covered by the instant grievance. An absence or a series of absences may constitute a serious obstruction in the effort of the Company to manage the plant, particularly when the production of war material is urgent. No one can deny the right of the Company to prevent or to correct such a condition, and in so doing, to take reasonable disciplinary action.

It is to be noted, further, that the disciplining of a worker for failure to report after previous warning is a practice which the Company has had for a long time. While, apparently, its use of this practice has not been consistent throughout the plant the Company has employed it on sufficient occasions to give it the status of an established rule and regulation. The Company has submitted for examination by the Arbitrator and by representatives of the Union a sample series of reprimand notices which indicate (1) that employees in the unit in question have been given warnings because of failure to report without notification and (2) that several of these employees were disciplined for a repetition of their faulure to report. Since the Agreement by implication grants the Company the right to make a reasonable use of discipline in the case of an employee who after previous warning fails to report on a scheduled turn and since this right is actually incorporated in Company rules and regulations the Company had proper legal grounds for its disciplinary action in the instant grievance.

However, it is clear that such disciplinary action must be for proper cause and must be reasonable in character. Because of the broad character of its possible application such a right must be used judiciously and not become an instrument of discrimination or an unwarranted device for depriving the worker of his equities in his job. Any complaint against an instance of such disciplinary action - as in the present grievance - must be considered, consequently, on the basis of the merits of the case.

This Arbitrator is convinced on the basis of the facts in the present grievance that the Company had proper cause for disciplining the aggrieved employee. The aggrieved employee had absented himself on his scheduled turn on December 17, 1944 without proper notification. His failure to present any reason for this absence led Management to issue to him a reprimand notice and to warn him that he would be subject to discipline on arepetition of the offense. His request to be excused from his scheduled turn on Dec. 24, 1944 was refused by Management on the ground that his services were needed and that his absence would disrupt work assignments. Despite this clear indication the aggrieved employee remained away on his turn on December 24th. This turn was a repair turn, of vital importance to the operation of the plant particularly under the stress of wartime production. The services of the aggrieved employee, who had the important position as head millwright, were especially needed. Through his long and creditable period of service of some fifteen years the aggrieved employee must have known the importance of reporting on a repair turn when he was scheduled for that turn. The aggrieved employee has given no explanation of his absence on this repair turn on December 24. There is no indication that his failure to report to work was due to sickness or other conditions beyond his control; indeed, it seems clear that he was determined to be absent and even though he had given no explanation which might have made his request for absence reasonable. If he had had a sound and reasonable explanation for wishing to be absent the action of Management toward him might be open to question. In the absence of such an explanation this Arbitrator finds that Management had proper cause for disciplining him for his failuse to report on the Dec. 24 turn.

While this Arbitrator finds that Management had proper cause for disciplining the aggrieved employee he believes on the basis of the information submitted to him that the amount of discipline given to the aggrieved employee was excessive. A careful examination of the sample set of reprimand notices submitted by the Company indicates that by comparison the disciplinary penalty of a layoff of six days given the aggrieved employee is more than is usually called for. In the case of employees covered by the reprimand notices we have the following picture:

Employee No. 1.

Absent without notification from Sept. 9 to Sept. 28.
Found by Company investigator who called at employee's home on Sept. 13 and Sept. 21 to be intoxicated.
Given disciplinary layoff of one week.

Employee No. 2.

Warned about failure to report on Dec. 31 without notification.
Warned about failure to report on Jan. 10 without notification.
Failed to report to work on Feb. 6.
Reported on Feb. 10 in intoxicated condition and was sent home.
Given disciplinary layoff of three days.

Employee No. 3.

Warned about failure to report on Dec. 13, 14, 15, 16 without notification.
Warned about failure to report on Jan. 2 and Jan. 6.
Failed to report on Jan. 8 without notification.
Failed to report on Jan. 14 without notification.
Given a disciplinary layoff of two days on Jan. 16.

Employee No. 4.

In year 1944 was absent from work 105 turns.
Received 18 warnings.
On Jan. 8, 1945 given a disciplinary layoff of nine turns.

Employee No. 5.

Warned for failure to report on Sept. 26.
Warned for failure to report on Oct. 4.
Warned for failure to report on Oct. 23, 26, 27, 28.
Failed to report on Oct. 30. Was sick from intoxication.
Given a disciplinary penalty of a layoff of five turns.

Employee No. 6.

Warned for failure to report on Sept. 15.
Warned for failure to report on Jan. 10.
Failed to report on Jan. 26 and 27.
Given a disciplinary layoff of two days.

Employee No. 7.

Warned for failure to report on Aug. 11, 12, 14, 15, 16.
Failed to report on Nov. 12-17. Was intoxicated.
Warned for failuse to report on Oct. 29.
Given a disciplinary layoff of one week.

Employee No. 8.

Warned for failure to report on August 10.
Failed to report on Aug. 11, 12, 13, 14, 16 and 17- employee stated that he had been intoxicated for this period.
Given a disciplinary layoff of eight days.

Employee No. 9.

Warned for failure to report on July 19, 20.
Failed to report on Aug. 21, 22, 23, 24, 25, 28 and 29. Warned that he would be dmoted with a repetition of this offense.

The Company has declared that the reprimand notices on the basis of which the above material has been compiled were a sample set, taken at random from the Company files. Consequently, this Arbitrator assumes that they can be taken as representative. Using them as a basis of comparison it seems clear to this Arbitrator that the disciplinary penalty given the aggrieved employee in the instant grievance was excessive. It is apparent that the aggrieved employee is a reliable, able, and conscientious worker.

He had a record of being on the job fourteen months without an, absence. He failed to report to work on a scheduled turn on only two occasions. While it is recognized that he occupied a crucial position and accordingly that his absence was more serious than in the case of an ordinary worker his penalty was not in line with the standard of judgment reflected in the discipline given to the above employees. In order to avoid any basis for a charge of discrimination to be made against the Company in its disciplinary action in this grievance and in order to bring the discipline in line this Arbitrator rules that the disciplinary layoff given the aggrieved employee be reduced from six to three days.

5. Award of the Arbitrator.

This Arbitrator finds that the Company had proper cause for disciplining the aggrieved employee. However, he finds further that the amount of discipline given was excessive in comparison to that usually given for a repetition of a failure to report on a scheduled turn. Therefore, he rules that the disciplinary penalty be reduced from six days to three days.

Herbert Blumer

August 20, 1945.

Grievance Number 1337

1. Nature of the grievance.

The grievance reads as follows:

"Abelino Herrera, #6296 started to work for the Steam Dept. Sept. 8/42, requested a leave of absence of 6 months in order to go to Mexico. This was denied by the Supt., resulting in the fact that the man quit in order to do so (Oct. 8/43). After returning from Mexico he was rehired by the Inland Steel Company in the Steam Dept. on June 2/44. In the meantime negotiation for adjustment of bonus was under way since Sept. 1942, and a settlement was reached in Nov. 43. It was approved by the W. L. B. on Feb. 1, 1944, it was paid off on a March payday. This worker requests the bonus adjustment for the months he earned his hourly rates from Sept. 8/42 to Oct. 8/43, because he left before the adjustment was made and wasn't notified that such adjustment was reached and was re-employed less than 90 days after the payment was made.

The Union contends that this amount of money is justly due him and requests that he be paid immediately."

This grievance was entered on behalf of the aggrieved employee by Samuel M. Krupsaw, Grievance Committeeman, on November 27, 1944.

2. Position of the Union.

In September, 1942 the Union began negotiations with the Company for an ajustment in the bonus system in the Steam Dept. The negotiations were completed in November, 1943, finally approved by the War Labor Board, on Feb. 1st, 1944, and paid off by the Company in March 1944.

The aggrieved employee had quit the Company on October 8, 1943 after failing to secure a requested six month leave of absence which would permit him to return to Mexico to liquidate an estate. He was not re-employed by the Company until June 2, 1944. By virtue of his absence he had no knowledge that back pay was due him resulting from the negotiations that took place while he was away. His request for the back pay to which he was entitled was denied by Management on the ground that he had failed to apply for his back pay within a 60 day period from the date on which the Company made payment to the employees.

The Company did not notify the aggrieved employee that he had back pay coming to him and that he must apply for it within 60 days or forfeit it. To deny him money which is due him, on the ground that he did not comply with Company rules which have never been posted and which he or no other employee knew to exist is to take unfair advantage of him.

The Aggrieved employee actually earned the money which he requests and is entitled to it beyond question. The only issue is whether the Company is

privileged to deny him, the money on the ground that application was not made within 60 days. The Union holds that he was not notified of the money on which he had a just claim and that he has in no sense forfeited his claim to what he had legitimately earned.

3. Position of the Company.

The aggrieved employee was hired on Sept. 9, 1942 and worked as a boiler washer in the Steam Department until October 18, 1943, when he left the employ of the Company, giving as his reason his desire to work nearer his home in Mexico because of his wife's illness. During his period of employment the Union filed a grievance for a wage adjustment in the case of incentive rates in the Steam Department. This grievance was settled satisfactorily by Management agreeing to make a retroactive payment of three-quarter cents ($0.0075) to Sept. 1, 1942. This wage adjustment was approved by Wage Stabilization in January, 1944 and paid to the employees in March, 1944.

The Company denies that the aggrieved employee is entitled to any back pay for the following reasons:

(1) On the basis of the regulations issued bu the National War Labor Board - Region VI - in its Form 63 the Company established a policy which requires employees who left the employ of the Company during a retroactive period to make application for retroactive period to make application for retroactive wage adjustments within a period of sixty days after the award. The pertinent portion of Form No. 63 reads as follows:

"It is within the employer's discretion to determine whether to pay an increase to employees whose employment terminated between the effective date of the increase and the Board's approval of the adjustment, provided that if the employees are represented by a labor organization with respect to the increase approved, the matter is one for mutual agreement."

"The period of sixty days incorporated in the policy of the Company is in line with the Little Steel Directive of 1942 which directs a sixty day period. This has been followed in the settlement of grievances. There have been no instances in which the Union did not regard it as satisfactory.

(2) The aggrieved employee did not return to the employ of the Company until some four months after the date of the ruling on the retroactive wage adjustment. No application was made on his behalf until some five months after that date.

(3) Unless a suitable time limit such as the National War Labor Board has recognized were established accounts of this type would never be closed. With a large labor turnover the absence of a time limit would mean endless confusion and the taxing of the Company's Time Department which is already both understaffed and overworked because of the exigencies of the war.

(4) Discussion and analysis.

The issue in the present grievance is whether the aggrieved employee forfeited his claim to his portion of the retroactive wage adjustment made to the employees of the Steam Department by failing to make application therefor within sixty days after the adjustment was made in March 1944.

The Company contends that the period of sixty days which is set as a time limit (1) is an established policy of the Company, (2) is in conformity with the regulations of the National War Labor Board, and (3) is necessary in order to avoid endless confusion and the inability to close accounts on the books of the Company.

These three contentions of the Company undoubtedly have merit but in the judgement of this Arbitrator they do not apply in the instance of the present grievance. The testimony presented at the arbitration hearing indicated conclusively that the Company made no effort to notify the aggrieved employee of the retroactive wage adjustment to which he was entitled. Even though the employee was out of the country, the Company was obligated in the opinion of the Arbitrator to send a notice to him at his last registered address. An employee in whose instance the Company made no standard and reasonable effort to notify him of a wage award on which he had a just claim, cannot be thought of as having slept on his rights. Notification by registered mail to the last address of employees who have left the employ of a company is a standard practice and is usually recognized by the National War Labor Board in its directives on retroactive wage awards. A procedure of this sort would mean that a company had discharged its responsibility of seeking conscientiously to notify an employee of a wage adjustment due him and that, accordingly, his failure to apply for it within a specified period was not the fault of the company.

In the case of the present grievance the failure of the Company to make a reasonable effort to notify the aggrieved employee of the wage adjustment due him cannot be construed as meaning that the employee surrendered his claim to that adjustment. Under these circumstances this Arbitrator rules that the Company pay to the aggrieved employee the wage adjustment due him.

5. Award of the Arbitrator.

This Arbitrator grants the grievance request and rules that the Company pay to Abelino Herrera the money due him in accordance with the incentive wage adjustments made in the instance of the employees in the Steam Department in March, 1944.

Herbert Blumer

August 20, 1945.

Grievance Number 1410

1. Nature of the grievance.

The grievance reads as follows:

> "A large portion of this work has been given out to contractors. Men working for contractors belong to the A. F. of L. and are given more consideration than our men. We are asking for an equal rate of pay which is $1.05 per hour.
>
> This grievance was first brought to the attention of Management on May 1st. Therefore we think the retroactive date should be the same."

This grievance applies to ALL TRACK LABOR in the Transportation Division. It was entered on May 6, 1944 by J. E. Dickinson, Grievance Committeeman.

This grievance was subsequently affirmed in a new grievance statement entered on Feb. 12, 1945 by F. C. Smith, Grievance Committeeman. This new grievance statement read as follows:

> "In view of the fact that Inland Steel track laborers receive 78¢ per hour, and the track laborers employed by the McKee Construction Co. working in the Inland Steel plant receive $1.05 per hour, we maintain that the principle of equal pay for equal work should prevail. We hereby ask that the Inland Steel Co. agree with the Union to petition the War Labor Board for permission to pay the track laborers employed by the Inland $1.05 per hour for so long as the track laborers employed by the McKee Construction Co. are at work in the Inland Steel Co."

The grievance has been extended to cover the construction laborers of the Company who are affected by the construction laborers of the McKee Company.

2. Position of the Union.

A. The Company has contracted with the McKee Construction Company on a cost plus basis for track and new construction labor. These outside workers who are under the supervision of McKee get a higher rate of pay than the regular employees of Inland. The Inland track laborers

get 79½¢ per hour whereas the McKee track laborers get $1.05 per hour - yet the two sets of workers do identical work and frequently work side by side.

B. Management agreed to limit the time in which the McKee men would be used in the plant when they were brought in, in May, 1944. The period was first for sixty days. Then it was stretched to ninety days. Now, over a year later these outside workers are still here. The Company has not lived up to its promise.

C. The presence in the plant of outside contracted labor receiving a rate of $1.05 for doing the same work for which the Inland men are paid 79½¢ has created a very critical situation. The McKee men belong to an AFL union whereas the plant is organized under the CIO. The regular employees of the Company are chafing under the unfair situation. The harm that has been done to the Union in the way of disunity is almost beyond repair.

The Inland track and construction workers involved in this grievance are unable to appreciate any explanation of the situation when they incur by comparison such a markedly lower rate and earnings, although doing identical work to that of the outside workers.

D. The Agreement between the parties specifies that the Union is the official and sole bargaining agent of the repair and maintenance workers. The presence of outside workers creates the anomalous situation wherein this provision of the Agreement is negated, in addition to the injustice imposed on the Inland track and construction laborers.

E. The effort of the Company to meet the problem by giving the Inland workers the right to work the seventh day and thus to get double time for the day is not sufficient. Even with these overtime earnings the Inland men do not get as much money for doing the same kind of work as the McKee men but in much greater quantity.

F. The Inland men are given the less satisfactory jobs, such as changing rails in the open hearths. The McKee men are given greater safety considerations than is true of the Inland men. The McKee men are equipped with better tools and machines than Inland men and consequently their work becomes easier to do.

3. Position of the Company.

A. The question to be decided in the instant grievance is whether the Company has the right to engage outside labor to perform vital work in its plant when employees cannot be hired thru the gate and when its own men are unwilling to put in extra hours on this type of work.

B. Confronted with a shortage of manpower, to properly maintain and repair the track system of our Transportation Department and being un-

able to obtain men from any other source, the Company contracted with the A. G. McKee Company, contractors, for a force of laborers sufficient to meet the department's minimum requirements. Because these men were paid $1.05 per hour and were members of the A. F. of L., the Local Union filed a grievance alleging that the Company was showing more consideration to the contract labor than to its own track laborers who are members of the C.I.O. and who are paid the general labor rate of $.79½¢ per hour.

C. The Company denies that the arrangement was entered into with the McKee Company as a means of discriminating against its own men. The fact that the men employed by the general contractor are affiliated with a different labor organization was merely incidental.

D. The work had to be done and there simply were not sufficient men in the ranks of Inland Steel Company who could or would do the work, with a consequence that outside help had to be sought.

E. Inland Steel Company is not in any position to dictate to the McKee Company or any other general contractors what rate of pay must be given to the contractor's men.

F. The Company deplores the need of getting outside assistance and will dispense with it as soon as possible. The Company, rather than discriminate against its own men, has given its track laborers every opportunity to work seven days a week, and comparative figures, which the Company is prepared to submit, will show slight difference in earnings and costs.

G. The Company could not grant the wage adjustment sought without throwing the rate structure of the entire plant out of line. To grant the relief sought by the Union would add greatly to the already excessive costs of maintaining the track system and would have the effect of scrapping the very foundation upon which the rate structure of some 2500 occupations have been established, certainly a foolhardy and shortsighted method of disposing of a wartime emergency.

4. Discussion and Analysis.

The present grievance dispute sets a complicated problem which this Arbitrator does not have the authority to resolve. It is a dispute which appropriately should be referred to the National War Labor Board which alone has the power to make and execute a determination on the basis of equity. The subsequent discussion will explain, accordingly, why this Arbitrator is returning the grievance to the parties with the recommendation that the Union process it thru the National War Labor Board.

The position of each of the parties on the grievance has unquestioned merit.

This Arbitrator is thoroughly satisfied that the Company has acted in good faith. The Company, which is producing war material of primary importance, is compelled to maintain its tracks in proper condition in order that the operations of its plant may not be impaired. The Company has not been able to maintain a sufficiently large crew of track laborers to keep the tracks in functioning condition. The size of the crew has declined over fifty percent during the last four years while production during this period has increased greatly and the need of trackage in proper condition has increased likewise. In order to meet this critical situation the Company contracted with an outside construction company for a group of workers who together with the track laborers of the Company would be sufficient to keep the tracks in a condition of minimum operating efficiency. This action of contracting for outside workers is not new or unusual for the Company, since over a period of years it has frequently contracted with outside companies for the relining of furnaces, building repairs, and construction work. This Arbitrator is convinced that the contracting for outside track labor was undertaken by the Company as a necessary expedient and was not designed as a means of weakening the Union. The Company is sincerely eager to terminate the arrangement as soon as it can arrange for a sufficiently large crew of its own workers to insure the minimum efficient maintenance of its tracks.

The Company has not control over the rate paid by the outside contractor to his employees who are track laborers. This rate is $1.05 per hour. In the judgment of this Arbitrator the Company could not raise the rate of its own track laborers from 79½ cents an hour to that rate. Such an increase would unquestionably throw its entire wage structure out of balance and become the basis for extensive claims of intra-plant inequities. Further, such an increase, as part of the permanent wage structure, would be disallowed under Wage Stabilization.

The position of the Union in this grievance has genuine merit. It is a very unfair situation for the track laborers of the Company to do identical work to that of the contracted track laborers from the outside, frequently working side by side, and receiving 25½ cents an hour less. Even granting that the Company workers have certain privileges such as seniority and the right to sixth and seventh day overtime, these would not be sufficient to justify the difference in wage rate. Anyone who imagines himself in the position of one of the Company's track laborers can readily appreciate the acute sense of inequity which they must feel.

Further there is no question that the presence of an outside group of workers enjoying such a favorable wage differential creates for the Union a situation of a most embarassing character. These workers of the general contractor belong to an A. F. of L. union whereas the workers of the Company are organized in a C.I.O. union. That the Union would be seriously harmed by such a situation is apparent.

The position of this Arbitrator and of his possible actions on this grievance should be clearly recognized. For him to rule that the Company should resist in contracting for outside labor would be unreasonable. The Company must keep its, tracks in proper condition in order to keep its plant in the fullest production of needed war material, and to do this it has to have the necessary crew of track laborers. It is clear that barring the possibility of increasing the rate for its track laborers it is necessarily forced to contract for outside workers. The laternative action for this Arbitrator would be to order some wage adjustment designed to eliminate the wage inequity which seems to exist. Yet it is clear that he cannot do this. The track laborers in the employ of the Company are not improperly classified. The tested and going rates of the area for their classification do not allow for any upward adjustment on the basis of correcting an inter-plant inequity. And this Arbitrator is not empowered to make a determination of whether this case is a "rare and unusual" instance deserving the setting of a special rate.

It is for these reasons that this Arbitrator is let to return the grievance to the parties with the recommendation that the Union process it thru the National War Labor Board. It is clear that the only possible Wage Stablization principle which might be invoked in the present case is that of a "rare and unusual case." The Board is the proper agency to see whether such a seldom used principle applies appropriately to the present grievance.

5. Action of the Arbitrator.

This Arbitrator returns the grievance to the parties with the recommendation that the Union process it thru the National War Labor Board in whose jurisdiction it appropriately belongs.

Herbert Blumer

August 20, 1945.