In the Matter of :

INLAND STEEL COMPANY,
Indiana Harbor Works
East Chicago, Indiana

and

UNITED STEELWORKERS OF AMERICA,
Local 1010, CIO

ARBITRATION

No. 23-24-25 & 26.

This is an arbitration proceedings pursuant to request of the parties directed to the Sixth Regional War Labor Board on November 6, 1945, which reads as follows:

> "The Inland Steel Company and Local Union No. 1010 of the United Steelworkers of America, C.I.O., cannot mutually agree upon an Impartial Umpire to settle several issues which have been processed to the stage in the Grievance Procedure calling for arbitration.
>
> "We are, therefore, requesting the Sixth Regional War Labor Board to appoint an Impartial Umpire to act and render a decision on these issues.
>
> Sincerely yours,
>
> UNITED STEELWORKERS OF AMERICA
>
> /s/ Joseph B. Jeneske, Representative
>
> INLAND STEEL COMPANY
>
> /s/ F. M. Gillies, General Superintendent"

Jacob B. Courshon of Chicago, Illinois was designated arbitrator by the Sixth Regional War Labor Board on November 20, 1945, pursuant to step number 6 of the grievance procedure contained in Article VI of the contract between the parties dated April 30, 1945.

Hearing in the matter was held in the office of the Company at East Chicago on December 11, 1945.

Appearances:

For the Union: Joseph B. Jeneske, Staff Representative
Don Lutes, Chairman of Grievance Committee

For the Company: F. M. Gillies, General Superintendent
Wm. Blake, Industrial Relations Staff

PARTIES

The Company

The INLAND STEEL COMPANY, Indiana Harbor Works, East Chicago, Indiana, (hereinafter call the "Company").

The Union

UNITED STEELWORKERS OF AMERICA, Local 1010, CIO, (hereinafter called the "Union") is the recognized collective bargaining agency for the production and maintenance employees of the Company at the Indiana Harbor Works, East Chicago, Indiana.

ISSUES

The following four issues were presented to the arbitrator:

I. THE MATTER OF THE DISCHARGE OF EMPLOYEE JOHN J. MOLNAR.

II. THE MATTER OF DISCIPLINE INVOKED BY THE COMPANY AGAINST EMPLOYEE OTTO GILLETTE.

III. THE MATTER OF THE CHARGE BY THE UNION THAT THE COMPANY, IN VIOLATION OF THE CONTRACT BETWEEN IT AND THE UNION, INSTITUTED A CHANGE IN THE METHOD OF PAYMENT TO STOCKERS, STOCKER HELPERS, MAGAZINE OPERATORS AND CHARGING HOOKERS.

IV. THE MATTER OF SENIORITY WITH RESPECT TO EMPLOYEE J. GOMEZ.

Issue One

THE MATTER OF THE DISCHARGE OF EMPLOYEE JOHN J. MOLNAR.

Background

Employee John J. Molnar started to work for the Company on August 22, 1945 as a craneman in the cold strip mill. He had not previously been an employee of the Company.

On September 6, 1945 employee Molnar became involved in a dispute with his foreman over the question of from whom he was to take his signals; he contending that he could only take signals from one man and that it was his understanding

that he was to take signals from the man assigned to his crane, and that only in case of emergency was he to take signals from the foreman. The foreman insisted that he was responsible for the department and that whenever he found it necessary to give signals it was the duty of the crane operator to take the signals from him.

A meeting was held in the office of Assistant Superintendent McLeod at which employee Molnar was present together with Mr. Patrick, General Foreman in charge of transportation handing cranes, tractors and hookers and Mr. McElligott, turn foreman, in the annealing department and employee Molnar's immediate foreman. The object of the meeting was to acquaint employee Molnar with the practice of cranemen in the plant and, according to the statement of the Company, having some understanding with employee Molnar with respect to his cooperation with supervision in his department.

Subsequent to this meeting employee Molnar was discharged on the grounds of an unsatisfactory probationary period in that he did not measure up to the standard of willingness to cooperate with his supervisors as required by the Company, and his indifferent reaction shown at the meeting coupled with his failure to indicate in any way that he would revise his former conduct and become more cooperative with his immediate supervisors.

The contract between the parties dated April 30, 1945 contains the following as Section 5 of Article VII:

> "Probationary Employees - All newly hired employees will be regarded as probationary employees for the first sixty (60) working days of their employment and will receive no continuous service credit during such period. During this period of probationary employment, employees may be laid off or discharged as exclusively determined by the Management, provided such exclusion shall not be used for the purpose of discrimination because of membership in the Union. After sixty (60) working days of probationary service the employee shall receive full continuous service credit from the date of original hiring."

Union Contentions

The Union contends as follows:

1. The incident of employee Molnar leaving his crane at 3 P.M. on September 16 was done on an established practice which allows an employee one-half hour relief from his job. Employee Molnar was not in violation of any rule of the Company by taking his relief period at the time he did.

2. In the discussions had, Mr. McLeod, Assistant Superintendent, stated that employee Molner's work had been good and that if he would show any sign of wanting to cooperate he would not be discharged. However, employee Molnar was discharged the same day without being given an opportunity to ccoperate and continue to do his work well.

3. Employee John J. Molnar, although a probationary employee had done his work satisfactorily and the only reason he was discharged was because of the position he took on what he believed his rights were as a Union member and by so doing had indicated to the Company that he might become very active in the support of the Union and thereby cause the Company some concern.

4. Employee John Molnar was indiscriminately discharged and should be reinstated with full compensation for time lost as a result of the discharge.

Company Contentions

The Company contends as follows:

1. Employee John J. Molnar, a probationary employee, before beginning his work as a craneman had his duties and responsibilities outlined to him in a talk with the General Foreman of Transportation Division, Mr. N. Patrick. Notwithstanding such instructions he distinctly violated department rules and practices by leaving his crane at 3 P.M. on September 16, 1945 before being relieved by the operator on the succeeding turn. When requested by the transportation turn foreman to return to his crane until relieved he refused to do so.

2. Previous to the incident of September 16 employee Molnar had given indication of an unwillingness to abide by the regulations of the transportation division and was admonished by the General Foreman that cooperation was essential.

3. On or about September 21 employee Molnar without apparently any reason or provocation advised G. McElligott, turn foreman in the annealing division of the cold strip mill, under whose immediate supervision he was then working, that he would not take any signals or instructions from him but would respond only to instructions he would receive from men on the floor. At a meeting held immediately thereafter in the office of Mr. McLeod, employee Molnar assumed a most indifferent attitude and would not promise or even indicate in any way that he would assume a more cooperative attitude in the future. The management of the department, because of the previous incidents and the attitude of employee Molnar at the conference, being convinced that he would not turn out satisfactorily, dropped him from employment because of "unsatisfactory probationary period."

4. The actions of the Company had nothing whatsoever to do with employee Molnar either being or not being a member of the Union. The final determination of this case by the Company is based upon the authority of the Company under Section 5 of Article VII of the agreement between the parties and a decision by the Company under the wording of said section cannot be questioned.

5. Even though the Company is of the opinion that this grievance is not entitled to be processed by virtue of the language of Section 5 of Article VII of the contract between the parties, in fairness to a returned veteran who was given employment for the first time by the Company, the Company consented to the matter being submitted to arbitration.

Discussion

The contract between the parties, in Section 5 of Article VII specifically provides that all newly hired employees will be regarded as probationary employees for the first 60 working days of their employment and further provides that during said 60-day period such employees may be laid off or discharged as exclusively determined by the management; the only limitation on the exercise of this prerogative on the part of management is that in making a determination of exclusion of any such

employees, same shall not be used for the purpose of discrimination because of membership in the Union.

The charge here made by the Union that employee Molnar was discharged because of the Company's concern that he might become very active in support of the Union is not supported by any act or statement brought to the arbitrator's attention; this charge is specifically denied by the Company and the arbitrator believes that denial is in good faith.

This entire dispute simply boils itself down to this:

In the opinion of the Company employee Molnar's attitude was that of indifference and he failed to intimate in any way that he would be cooperative with supervisory personnel in his department to the extent required by the Company of all employees. There had been several incidents during his short employment to indicate to the Company that he was somewhat belligerent and was not readily amenable to supervision. In face of the record as presented to the arbitrator, the arbitrator is of the opinion that the Company was justified in its determination with respect to employee Molnar and was free under the provisions of said Section 5 of Article VII of the contract to terminate his employment as it saw fit. In the absence of any showing of discrimination because of membership in the Union, the Company's determination under Section 5 of Article VII is not open to question. To hold otherwise would be tantamount to a rewriting of said Section 5 which is a matter of bargaining between the parties.

Findings

In view of the foregoing, the arbitrator herely enters the following findings:

1. That employee John J. Molnar was a probationary employee within the purview of Section 5 of Article VII of the contract between the parites dated April 30, 1945.

2. That a determination by the Company of which new employees it will retain in its employ after the 60-day probationary period, is expressly provided for in the contract between the parties and any decision made there under by the Company is not the subject matter of a dispute except to the extent that it may be fully proved that the action taken by the Company was for the purpose of discrimination because of membership in the Union.

3. That the action taken by the Company with respect to probationary employee Molnar was in no way impelled because of his membership in the Union and the termination of his employment was not for the purpose of discrimination because of membership in the Union.

4. That the Company acted fully within its rights under Section 5 of Article VII when a determination was made to discharge employee Molnar.

Issue Two

THE MATTER OF DISCIPLINE INVOKED BY THE COMPANY AGAINST EMPLOYEE OTTO GILLETTEE.

Background

During the years of 1943 and 1944, because of manpower shortage, the Company had requested employees to take vacation pay in lieu of time off. At the request of the Union and to assist employees in the payment of their Federal Income Tax due March 15, the Company adopted the practice of making payment on or before March 10 to employees who desired pay in lieu of vacation. This did not take away from the employees the right to insist upon vacation inlieu of pay therefor.

On February 10, 1945 a bulletin was posted throughout the entire plant of the Company which read as follows:

> "As in previous years, those employees desiring vacation pay in lieu of time off will receive their vacation checks in the March 10 paycheck. Unless notified to the contrary, the Paymaster will issue all vacation checks at that time."
>
> /s/ F. M. Gillies, General Superintendent

In response to this bulletin about one-tenth of the Company's employees signified their intention to take a regular vacation and advised the Company to that effect.

Employee Otto Gillette did not notify the Company that he did not wish his vacation money on March 10, and on that date received and accepted pay in lieu of vacation. The regular vacation time for employees extended from March 1 to December 31.

On May 21, 1945, employee Gillette in making a work report put the following notation on the bottom thereof:

"Will be off on vacation from July 14 to 28".

On May 24, employee Gillette, together with other employees in his department, served a written notice upon the General foreman of the Electrical Division that they desired to take a vacation. Employee Gillette specified July 14 to July 28 as his desired time. On the following day the Electrical foreman, F. E. Kelly, talked to the men in his department (Electrical) regarding the matter of vacation schedule, at which time he informed them that they could not grant a vacation to any man who had on March 10, 1945 accepted pay in lieu of vacation. He did, however, further inform them that if conditions permitted, they might at some later date have time off.

On July 7, 1945, employee Gillette made the following notation on his work report:

> "I am changing my vacation time from July 14 to 28 to August 18 to September 1"

On July 14, 1945 A. J. Cochrane, the department superintendent wrote a letter to employee Gillette, Which reads as follows:

> "In order that there be no misunderstanding with regard to vacation policy we wish to advise you that when vacation allowance is paid an employee in lieu of taking time off, the vacation question is settled at that time, however, it has been the practice in the past for some employees to ask for time off during the summer months after they have drawn

Their vacation allowance in March. In such instances it has been our policy to permit employees to take time off when the conditions are such that his absence from plant will not throw a burden on the department or necessitate working employees overtime. The question of employees taking time off from work is one that rests solely in the hands of the departmental management in that the management must determine whether or not employees can be spared from their work. Section II of Article IX reads, 'No vacation will be recognized unless authorized by the departmental superintendent.' In view of this clause and the further fact that you have taken vacation pay in lieu of time off, any unauthorized absence on your part would not be on the basis of a 'vacation'.

"In the past written notices have been issued to employees as to the scheduling of their vacations so as there would be no misunderstanding concerning the periods in which they would be off duty, and so as to create the least possible dislocation in the department and to the working forces.

"We have been given the understanding that you intend to take time off whether or not you are given permission to do so. We wish to call attention to the seriousness of such action. We have no objection to permitting you to be off work during periods when your absence will not react to the detriment of the department but we are at this time informing you to the effect that your absence during an unauthorized period will make you liable for disciplinary action up to the maximum penalty of suspension."

Nothwithstanding the foregoing, employee Otto Gillette absented himself from work for a period of two weeks. Upon his return he was suspended for a period of six days. On September 4, 1945 employee Otto Gillette filed a grievance which reads as follows:

"STATEMENT OF GRIEVANCE
U.S.A. Local Union No. 1010
C.I.O.
Indiana Harbor, Indiana

Department Symbol and Number
10-B-8
Date - Sept. 4, 1945

Otto Gillette
36" Mill-Electrical

Motor Inspector

Description of grievance: Aggrieved contends that suspension is unjust and in violation of Article IX of the existing Agreement.
Aggrieved requests full pay for all time lost.

Signed, Sigmund Kubiak, Rep.

Union Contentions

The Union Contends as follows:

1. Many employees who had in the past accepted pay in lieu of vacation were nevertheless allowed to take vacations. However, the management of the Electrical Department of the 24", 36" and 19" Mills took the position in 1945 that when an employee accepted pay in lieu of vacation on the first pay day in March they thereby forfeited the right to take any vacation, although in the previous year of 1944 vacations were allowed even after vacation money had been paid in the same department. Furthermore, vacations were granted in other departments under similar circumstances and no discipline issued.

2. In the past, whenever the Company had some program to put over to the employees, such as a new Insurance Plan, a War Bond or Red Cross Drive, they have always called the employees in and talked to them in order to effectively promote these programs. It would have been just as easy for them to call the employees in the same way and explain to them that they would forefeit their vacation if they accepted their vacation pay. They did not do this but relied upon bulletins placed through the shop. In too many instances the bulletins are lost or covered up within a short time after they are posted and only a few people get to read them. In some departments men have to go out of their way if they wish to see a bulletin board.

3. Employee Gillette did receive his vacation pay on the first pay-day in March the same as the year before, and he requested time off for vacation the same as he had the year before, but this year he was denied time off on the grounds that he had forfeited his vacation privileges by accepting vacation pay in March.

4. Employee Gillette was entitled to time off whether for vacation purposes or personal. The Company had no right to deny him a vacation or time off if he deisred it. The agreement does not say that the employee forfeits his vacation privileges by accepting his vacation money, and does not provide for the amount of discipline given to him if he requested time off.

5. The contract between the parties provides a penalty for employees who absent themselves from work and it was put into the agreement as disciplinary action for people who absent themselves from work and who do not notify the Company when they will return. Employee Otto Gillette notified the Company far enough in advance as to when he would be off and when he would return.

Company Contentions

The Company contends as follows:

1. It emphatically denies that Otto Gillette's suspension was unjust and in violation of Article XI of the Agreement between the Company and the Union, and denies that he is entitled to any pay for the time lost by virtue of said suspension.

2. The conduct of the Company in this matter is clearly sustained by the contract between the Company and the Union and by the established and agreed upon vacation practices during the war years.

3. Otto Gillette's conduct in this case was in direct and open violation of Sections 11 and 13 of Article IX of the contract, which sections respectively read as follows:

> "Section 11. No vacation will be recognized unless authorized by the department superintendent.
>
> "Section 13. Due to manpower shortage, the Company may request that employees take their vacation pay in lieu of time off. In such cases those eligible for vacations will be paid on the first pay day of March unless desired otherwise by the employee."

4. This grievance is presented in bad faith, not only because of Gillette's open defiance of the contract, but because other men in his department had similarly conducted themselves, had been disciplined in the same manner, and apparently recognized that their position in the matter was untenable.

5. To grant the request sought in this grievance would not only condone numerous open and direct violations of the contract--to all the provisions of which both the Company and the Union have agreed--but would amount to an invitation to all employees to flout at will the recognized and agreed upon authority of management.

Discussion

It is to be noted that employee Gillette received his vacation money in March, 1945 at which time the contract between the parties dated August 5, 1942 was in effect. He made his request for vacation on May 24, 1945 at which time the contract between the parties dated April 30, 1945 was in effect. He earned his vacation under the provision of the first contract which contains the following provisions under Article IX thereof:

> "The vacation period will be from March 1 to December 31 and the vacation schedule must necessarily conform to the requirements of business and vacations must be taken as scheduled by the management."
>
> "No vacation will be recognized unless authorized by the department superintendent."
>
> Article XI of said contract reads as follows:
>
> "Plant Management - The management of the plants and the direction of the working forces, including the right to direct, plan and control plant operations, the right to hire, promote, demote, suspend, or discharge employees for cause, or to relieve employees because of lack of work or for other legitimate reasons, or the right to introduce new and improved methods or facilities, or to change existing production methods or facilities and to manage the properties in the traditional manner is vested exclusively in the Company, provided that nothing shall be used for the purposes of discrimination against employees because of membership in or activity on behalf of the Union."

The contract between the parties dated April 30, 1945 makes the following provisions in Article IX thereof, dealing with vacations:

> "Section 10. Promptly after March 1, of each calendar year each eligible employee shall be requested to specify the vacation period he desires. Vacations will, so far as possible, be granted at times most desired by employees (longer service employees being given preference as to choice), but the final right to allot vacation periods, and the right to change such allotments, is exclusively reserved to the Company in order to insure the orderly operation of the plants."
>
> "Section 11. No vacation will be recognized unless authorized by the department superintendent."

"Section 13. Due to manpower shortage, the Company may request that employees take their vacations pay in lieu of time off. In such cases those eligible for vacations will be paid on the first pay day of March unless desired otherwise by the employee."

While there is no provision in the contract of August 5, 1942 similar to Section 13 of Article IX of the contract of April 30, 1945, it nevertheless is quite plain that said Section 13 was included in the April 30, 1945 contract as a result of the practice which grew up while the contract of August 5, 1942 was in force, and under which practice the notice of February 10, 1945 herein above quoted was posted by the Company.

It is also quite evident that notwithstanding the practice evidenced by said notice of February 10, 1945 and the payment to certain employees of their vacation pay in lieu of time off, some of the employees were granted vacations during the established vacation period. It is therefore only reasonable to suppose that the granting of vacations to employees notwithstanding the fact that they had previously received vacation pay in lieu of time off was a practice which grew up as a result of the desire on the part of both parties that employees have time off each year if possible. It is also quite evident that it was the intention of the Company to give employees time off, even though they had accepted vacation pay in lieu of time off, if same would not interfere with production schedules and general operation of the plant.

The fact that employee Gillette had in previous years received vacation pay in March in lieu of time off and subsequently was allowed to take a vacation did not in itself establish an irrevocable practice but merely showed that the superintendent of his department deemed it possible for him to take time off for vacation purposes; but in the year in question the superintendent found it impossible to permit employee Gillette to take time off for vacation of the time he had requested same.

Here it must be noted that both contracts make the provision that no vacation will be recognized unless authorized by the department superintendent.

If the department superintendent acted arbitrarily in denying employee Gillette the right to take time off for vacation purposes, notwithstanding the fact that he had previously taken vacation pay in lieu of time off, same would be the basis of a grievance which could have, and should have been disposed of in the usual, orderly and proper manner set forth in the grievance procedure contained within the contract between the parties.

Employee Gillette did not take advantage of the machinery available to him for filing such a grievance and having same processed in an orderly manner by his duly constituted bargaining representatives, the Union. Instead, he took it upon himself to set his own vacation date, and when he was denied the right to take the time he had requested, disregarded the admonition of his superintendent, disregarded the function of the Union, and the grievance procedure outlined in contract between his Union and the Company, and took the vacation notwithstanding. He did not, however, hesitate to seek the Union's assistance when the Company invoked a penalty against him for his actions. The least that can be said about employee Gillette was that he was insubordinate and arbitrary.

This is another incident of an employee, feeling himself aggrieved, taking it upon himself to resolve his own grievance in his own way without regard to the rights of the Company and to the fact that there was a duly constituted and authorized representative for him whose duties and responsibilities it was to present a grievance on his behalf and consult management thereon with a view of resolving same satisfactorily. Such a situation should not be condoned by either the Company or the Union as it tends to destroy the proper relationship between a Company and the duly certified collective bargaining agency.

Under the circumstances here presented to the arbitrator, the arbitrator is of the opinion that employee Gillette was subject to disciplinary action by the Company and that the discipline here invoked was not arbitrary of excessive.

Findings

Based upon the foregoing, the arbitrator enters the following findings:

1. That under the provisions of the contract between the parties the Company was to determine the time in which any employee would be permitted time off for vacation.

2. That employee Otto Gillette absented himself from work for vacation purposes without proper authorization by the superintendent of his department in violation of Section II of Article IX of the contract between the parties dated April 30, 1945 and Article IX of the contract between the parties dated August 5, 1942, and was insubordinate in so doing.

3. That the Company was justified in the disciplinary action taken with respect to employee Gillette because he had unauthorizedly absented himself from for vacation purposes, and that such disciplinary action was not in violation of Article IX of the existing contract between the parties.

Issue Three

THE MATTER OF THE CHARGE BY THE UNION THAT THE COMPANY, IN VIOLATION OF THE CONTRACT BETWEEN IT AND THE UNION, INSTITUTED A CHANGE IN THE METHOD OF PAYMENT TO STOCKERS, STOCKER HELPERS, MAGAZINE OPERATORS AND CHRRGING HOOKERS.

Background

For many years full crews of stockers, stocker helpers, magazine operators and charging hookers have been carried under the following circumstances:

a. When the mill is in operation.

b. When a furnace is pulled or emptied for repairs.

c. When furnace is charged after repairs.

d. On turn immediately preceding starting of mill operations.

During war production years the Company strip mills were rolling plates on such schedules that there was little, if any, occasion for any employees herein involved to be doing work other than that required on their regular job, but regardless of what amount of work was done on other than their regular jobs, they received the rate of pay of their regular job.

With the slow-down of war production and the consequent reduction in plate orders, mill schedules were reduced, and it frequently occurred, for one or two turns per week, that many of the employees would not spend their entire work week doing their regular work, but when the mill would be down some of them would do other work in their department. This other work may have been rated higher or lower than the rate of their regular job, depending on the nature of the work, but the Company continued to pay them the rate of their regular job, notwithstanding the nature of the work done when the mill was down. This continuation of payment of regular rate is claimed by the Company to have been done through error of the timekeeper and that when the error was detected the correction was made, whereby these employees were paid the rate of the job done, rather than the rate of their regular work, for work done when the mill was down.

It seems that this error was discovered on or about November 23, 1944 and such correction was immediately instituted. Grievance was filed on November 24, 1944 on behalf of these employees, which reads as follows:

STATEMENT OF GRIEVANCE
U.S.A. Local Union No. 1010
C.I.O.
Indiana Harbor, Indiana

Name GROUP Check No. VARIOUS
(If group grievance, list names and check numbers).

Department - Division 44" - 76" Slab Yard Occupation VARIOUS

Description of Grievance: "TOPIC" DEMOTION OF STOCKERS, STOCKERS HELPERS, MAGAZINE OPERATORS, AND CHARGING HOOKERS, WHEN MILL IS DOWN.

We, the undersigned, feel that the demotion is out of order, because ---- the operations of the slab yard, is continuous. In the past, the above mentioned, have been carried on their respective jobs. This demotion constitutes a wage cut, which by the War Labor Board is outruled at the present. We Demand retroactive pay from November 23, 1944.

Signature of Employee or Representative

The Company denied the grievance on the grounds that it did not institute a change in practice but was correcting an error and conforming to a long standing Company practice of payment, and informed the Union that the payment to these employees of their regular rate, notwithstanding the fact that they were doing other work from time to time, was through the error which had just been discovered.

The following is a description of the jobs involved and the rate of pay:

JOB CLASSIFICATIONS

STOCKER: Primary Function: See that steel is ordered by the Assistant Provider, charged in proper sequence.

Receives charging order from Assistant Provider. Looks up each item in slab record. Marks record to show slab usdd and puts location in yard of slabs on charging order. Turns this data over to Stocker Helper.

Writes out furnace charging report.

Enters memos. (Keeps stock record up to date).

Helps helpers locate and uncover steel when necessary. Makes decision as to slab size or stamping when questioned by stocker helper or magazine man. In case of pile up in sequence or if a plow is put on a skid must go to the magazine roller line and check slabs going into the furnace to be sure they are on correct skids.

Takes changes in the line up forms and gives corrections to Assistant Provider over the telephone.

Rate - $10.70 per day.

STOCKER HELPER: Primary Function: Locates slabs in yard, uncovers and marks up so they are ready to charge.

Receives lineup sheets from stocker, goes in the yard, to rows called for, actually finds steel, marks up the slab size, heat number, and number of slabs going to be charged on the steel.

When other slabs are piled on top of slabs to be charged must move them off in order that slabs to be charged are in the correct row.

Marks each item on the line sheet okay when it is uncovered, and ready to go to the magazine. Gives the linepp sheets to charging hookers.

Also unloads cars of steel delivered from outside sources, places steel in rows and keeps record of what is in each row.

Rate - $9.25 per day.

FURNACE MAGAZINE OPERATOR: Primary Function: Operates slab charging magazine.

Receives carbon copy of lineup sheets for Stocker. Figures out the skids each item should start on. Checks slab size and heat number stamped on slab against the lineup sheet. If any discrepancies, calls the Stocker.

Operates magazine pushing slabs onto the roll line. Slots slabs on No. 1 furnace. (this is only on 76" mill). Signals whenever he needs steel.

Rate - $9.35 per day.

CHARGING CRANE HOOKER: Primary Function: Hooks up slabs that have been okayed by Stocker Helper in chain slings and chains to magazine.

Measures sizes of slabs and checks heat numbers, receives lineup sheet from Stocker Helper and checks heat of charging to be sure steel is ready to be hooked up.

Hooks chain sling around lifts of steel to be sent to the magazine. Send these lifts up in the sequence called for on the lineup sheet. Returns complete lineup sheets to office for files. Also unloads cars of steel from outside.

Rate - $8.63 per day.

At the hearing the Company was requested to submit to the arbitrator as an exhibit actual Company records for the years of 1938, 1939, 1940,1941 and 1942 covering a fair number of the employees in the classifications in question, showing the occupation, number of turns at regular occupation and rate of pay, number of turns worked at other occupations and the rate of pay received. A copy thereof was to be submitted to the Union and the Union was to have the right to check same with the actual Company records to ascertain the correctness thereof.

On December 29, 1945 the Company submitted this record with respect to eight employees. The record disclosed that during the years 1938 to 1942 inclusive these employees spent most of their time in their regular occupations, and that for the time spent on work other than their regular occupations they received the rate of the job done. These rates varied, sometimes less than their regular rate, sometimes equal to their regular rate and sometimes higher than their regular rate.

The Union in commenting upon the information submitted by the Company, took the following position:

1. No reason is shown for the change in a particlular worker's job.

2. During the years of 1939, 1940 and 1941 the 44" mill was only operating on seasonal work with the mill being down for weeks at a time. When the mill was down these men were demoted in accordance with their length of service. While the mill was operating the employees were carried full time on their regular occupations.

3. The present grievance was filed on the basis of demotions whereas the Company records show instances of promotions.

4. Absenteeism is a factor to be considered because it was the department practice to allow people to make upfor lost time by filling in extra turns and vacant turns on lower paid jobs. There were also instances where men were asked to fill turns on jobs other than their own as an accommodation to management.

5. In some instances the Company records show jobs that are not listed within the department in question and the Union has no knowledge of some of these jobs such as "schedule man", "General Laborer", "Laborer and Crane Hooker".

6. The Company contends that the Union's claim is that these employees are always carried on their regular occupations. The Union made no such claim but is merely asking that these men be carried on their regular jobs in accordance with the work week of the department, not interfering with any other occupation which would also deprive them of working their full schedule. The present practice is to demote the employees as the Company sees fit, disregarding entirely the promotional sequence. Had these men known that the practice of carrying them on their regular job was to be discontinued they would not have taken these jobs and would have been able to provide more security for themselves by taking other jobs in the department.

7. These Company records bear out the Union's contention that the practice prior to and during the war has been changed insofar as at the present time each man is demoted two or three times weekly, depending upon the operation of the mill. Therefore, in the period of a year each man, under the present practice, would have better than 100 turns at a demoted occupation. The highest number of demotions shown by the Company records for any one year is 52. This is in itself an indication that these men were carried on their regular jobs or better except in extreme cases.

Union Contentions

The Union contends as follows:

1. Prior to November 1944 the people involved in this dispute were being paid the rate of their regular job on down turns as well as operating turns. On November 23, 1944 the Company took it upon itself to change this by paying the regular rate only for operating turns and demoting employees on the down turns and paying them the rate of the job they were demoted to.

2. The 44" and 76" slab yards have a recognized promotional sequence which is followed in all cases of promotion or demotion. However, in this particular issue the sequence is not followed in demotions because of the fact that some of the jobs do not depend upon the operations of the mill, and in making these demotions these jobs are skipped and the people herein grieving are demoted below them.

3. The normal working force of the people presenting this grievance is six men. In the past when down turns occurred, three men were considered normal and adequate; now, however, the Company has taken the position that the whole set up was the result of a clerical error and has reduced the force to two men on down turns and demoted the other employees affected. When the mill is down the men were paid at the "hooker" rate. When the mill is down these two men are kept on at the hooker rate, the other four are given lower paying jobs in sequence; all of which is a violation of the regular Company practice of paying the regular rate to all men of the crew regardless of whether or not the mill was down.

4. Operations in the slab yard is continuous, and the Company in effect is changing an established practice without any change in operations or methods of operation or equipment, and by so doing is cutting the wages normally paid to these employees.

Company Contentions

The Company contends as follows:

1. Section 5 of Article IV of the agreement between the Union and the Company dated August 5, 1942 which was the contract in force up to April 30, 1945 reads as follows:

> "An employee working on a regular job ordinarily filled by someone else, shall be paid the rate of the job. An employee requested by Management to take a job paying less than the normal pay of the job on which he is regularly employed shall receive the rate which he receives when regularly employed."

2. The Company was within its rights as set out in the above quoted section of the contract for the reason that on all turns during which the mill is down employees in the classifications here involved did work, if at all, on a job ordinarily filled by someone else. This was particularly true in the years immediately preceding the war. There was no occasion during war production for members of these crews to be doing work other than their regular job, but as plate orders fell off and the mill schedules were subsequently reduced, a change in the duties of these employees quite naturally took place on one or two turns a week. For some time after the mill schedule was reduced these employees continued to get their regular rate of pay even when engaged on other work during mill down turns but this was through the error of the timekeeper. When this error was discovered correction thereof was made. This correction of error does not constitute a change in Company practice nor a temporary demotion of employees during mill down turns but constitutes a resumption of a Company practice that was more or less normal before war production necessitated working extended hours.

3. The occupations herein involved are not continuous but are contingent upon the number of turns per week that the mill are in operation. Mill operations should not be termed continuous in the same sense that the blast furnace, coke plant and open hearth are continuous operations for the continuous operation of the mill depends upon production schedule and in normal times the mill are down several turns per week.

4. The Company's treatment of this matter is not only supported by years of past practice but is specifically covered under Section 5 of Article IV of the agreement between the Company and the Union dated August 5, 1942.

5. Compliance with the Union request set forth in the grievance filed herein would not only be contrary to Section 5 of Article IV of the agreement between the parties then in effect but would result in a plantwide disruption of the accepted practice affecting the payment of wages to an employee for work performed on a job other than his own.

6. When the mill is down the regular work for these employees is no longer in existence and they therefore have to be classified on whatever work they are doing.

Discussion

At the hearing the Union testified to the effect that when a mill is down the work done by the men in question still constitutes a part of their regular job as the operation of the slab yard in connection with the mill is a continuous one; the only part that they don't do is that which is only required when the mill is in operation, and that all of the work done when the mill is down has to do with preparation for recharging the mill. Further, that the men had no choice of what work was to be done when the mill was down, nor the right to lay off, since all of the work was departmental work and had to be done. Refusal on the part of any employee to do work in the department, other than his regular work, would have been insubordination.

The Company countered with the statement that there is no necessity for regular duties when the mill is down, and also that certain of these job descriptions when the mill is down had a lower rated occupation; and placed its reliance upon its contention that the work done by these employees during the down turns of the mill constituted "working on a regular job ordinarily filled by someone else," and that the rate applicable thereto is the rate of the job, citing Section 5 of Article IV of the Contract dated August 5, 1942.

It was established at the hearing that even in normal times the number of hours spent by these employees at so-called other work when the mill is down constitutes a small percentage of the total work week.

In answer to the query, "Do you give these employees a choice of taking the lower rated job or going home when the mill is down?" the Company answered, "It is the same work the men getting a lower rate of pay get when the mill is down." The Union answer: "That is work in the department and regularly done by all employees in the department," insisting that when the mill is down men regularly engaged on certain jobs assist in doing all other work in the department preparatory to reoperation of the mill and called the arbitrator's attention to the job content in each of the job classifications hereinabove quoted.

In connection with the Company's position that the work done by the employees in question during down turns of the mill falling within the purview of "working on a regular job ordinarily filled by someone else" (Section 5, Article IV, Contract August 5, 1942), it is to be noted that said Section 5 of Article IV also contains the provision that "an employee requested by management to take a job paying less than the normal pay of the job on which he is regularly employed shall receive the rate which he receives when regularly employed."

Measured in the light of the above two quotations and from the evidence and testimony presented to the arbitrator, the arbitrator is of the opinion that the work done by the employees in question during down turns of the mill does not

constitute "working on a regular job ordinarily filled by someone else," but that same constitutes work regularly and necessarily done in the department preparatory to reoperation of the mill and is required work.

Undoubtedly, from time to time when the mill is down, certain employees perform jobs of an extrinsic nature not regularly done in the department, or only occasionally done, which situation would be that of an employee required by management to do work which carries a rate more or less than the normal pay of the job on which he is regularly employed.

Here it is to be noted that the contract provision covers only the doing of work paying less than the normal pay of the job on which the employee is regularly engaged and makes no mention of work paying more than the normal pay of the job on which the employee is regularly engaged. There is no provision in the contract, usually found in contracts of this nature, governing a worker's rate of pay when he is engaged in doing work which carries a higher rate than that of his regular job. According to the Company's exhibit hereinabove referred to, it was the former practice of the Company to pay the rate of this other work regardless of whether it was higher, lower, or equal to the rate of the employee's regular job.

It is to be further noted that there is no provision in the contract between the parties, usually found in contracts of this nature governing a worker's rate of pay when a majority of his time is spent in work of a particular job classification. As a general rule, provision is made that a worker's rate of pay shall be the rate of the work in which he is engaged for a majority of his time, that is, a majority of the work week. This is touched upon, however, in Section 4 of Article IV of the contract dated April 30, 1945 which reads as follows:

> "When a mechanical or maintenance employee in his performance of duties is called upon to do work entailing equal skills as required on higher rated occupations for more than one-half of his time within an 8-hour period he shall be paid the rate of the higher skilled classification, with the exception of those cases where the employee in the lower paid classification is working in the apparent higher paid classification under the direction of the higher paid employee."

It is further to be noted that from the Company records a very small percentage of any of the worker's time was spent on work other than his regular job. It was not disclosed or any estimate made as to what portion of each of the worker's time will hereafter be spent on work other than his regular job, that is, for the time when the mill is down.

We have here the strange situation where the Union is demanding that, regardless of the nature of this so-called other work, the employee shall receive the rate of his regular work. This would tend to penalize those employees who, under the Company practice of former years and that which the Company now wishes to revert to, would receive a rate higher than his regular rate when he is doing work rated higher than his regular work. However, the Union in its grievance speaks only of so-called demotions, referring to the instances where the worker receives a rate lower than his regular rate. The grievance is limited to said so-called demotions and lower rate of pay, and the arbitrator is limited in his determination to that question.

It seems that the Company practice, disclosed in the additional data for the years 1938, 1939, 1940, 1941 and part of 1942, of payment to the worker of the rate of the job for work done when the mill was/down, was abolished during the high production war period, and that from 1942 to the latter part of November 1944, the practice of the Company was to pay the worker his regular rate regardless of what work was done. This practice was continued for a considerable period of time, in fact, up to the latter part of November 1944, even though mill down turns occurred more frequently.

In the final analysis this dispute must be determined by an interpretation insofar as possible of the applicable provisions contained in the contract between the parties. The only applicable provision is the last part of Section 6 of Article IV of the contract dated April 30, 1945, which is the exact wording of Section 5 of Article IV of the contract dated August 5, 1942, and the theory expressed in the above quoted portion of Section 4 of Article IV of the contract dated April 30, 1945.

It seems to the arbitrator that when the Company made the discovery that it was following an unintended practice through error, same should have been then and there adjusted by negotiation with the Union before reverting to its former practice. The practice of paying these employees the rate of their regular job even for work done while the mill was down had been of too long a standing to justify reversion to a former practice willy-nilly. The duration of the alleged erroneous practice was such as to justify the employees in regarding same as the regularly adopted practice in the department, and while the arbitrator cannot agree with the Union in the statement that the reversion to the old practice constituted a demotion to certain employees for a portion of their work week, in the sense that a demotion is usually and customarily defined, it does constitute a change in the method of payment, standing for a considerable period of time.

Findings

In view of the foregoing, the arbitrator hereby enters the following findings:

1. That the work in the slab yard is a continuous operation in connection with the mill.

2. That when the mill is down, work done by many employees in the department, though not the same as their regular job, constitutes necessary operations within the department and is work required of them by the Company.

3. That continuously, from 1942 to November 23, 1944, the Company adopted the practice of paying the rate of the worker's regular job for work done during mill down turns and that the change instituted on November 23, 1944 of reverting to the practice prevalent prior to 1942 constituted a change in an established practice without any change in operations or methods of operations or equipment.

4. That Section 5 of Article IV, the contract between theparties dated August 5, 1942, and likewise contained in Section 6 of Article IV, the contract dated April 30, 1945 reads as follows:

"An employee requested by management to take a job paying less than the normal pay of the job on which he is regularly employed shall receive the rate which he receives when regularly employed."

is the provision of said contracts applicable to the dispute here in question.

5. That the employees involved in this dispute are entitled to be paid the rate of their regular job when the mill is down and to reimbursement for any loss as a result of the change inaugurated by the Company on November 23, 1944.

Issue Four

THE MATTER OF SENIORITY WITH RESPECT TO EMPLOYEE J. GOMEZ.

Background

For some time prior to November 8, 1936 employee Gomez was working as a hooker in the 40" mill. He had accumulated some seven years' seniority on that job. On November 8, 1936, when he reported to work on his regular job he was told by the superintendent that the Company desired some crane operators in the 46" mill. This evidently was the beginning of a new operation instituted by the Company. Upon his reporting to the 46" mill he was given the job as operator of the #6 crop crane.

There is some dispute with respect to what took place, as he worked only one day on this job, became ill and did not return to work until November 15th. When he reported back at the 46" mill on November 15, 1936 the foreman of that department told him that he had supposed, because he was absent, he had gone back to his old job. Gomez then informed him that he had absented himself from work because of illness, which illness was subsequently excused by Company officials. The testimony as to what took place upon his return to work on November 15 is somewhat conflicting, the Company foreman making the statement that he had told Gomez if he wanted to go back to work in that department he could do so with the understanding that any man on the crane list would be ahead of him in the matter of seniority. Employee Gomez made the statement that he was retained in the 46" mill with the

understanding that at the first opportunity he would be given the job as operator of the 60T crane because he had complained of not wanting the crop crane job, and he had told the foreman that he would not stay in the department if all they had to offer was the crop crane job. There is some variance as to conversation which is alleged to have taken place with respect to his seniority, the foreman claiming it was understood that employee Gomez would lose his former seniority by staying in the 46" mill and employee Gomez claiming that he certainly would not have relinquished over seven years' seniority in one department by accepting no better job in another department, and it was understood that he would carry all accumulated seniority to the department to which he transferred.

The important question here involved is, did employee Gomez voluntarily go to the 46" mill because it was a better job with better opportunities even though he would lose his seniority accumulated on the 40" mill job?

All of this tookplace prior to the time there was any contractual relationship between the Company and the Union. On several occasions an attempt was made to resolve the matter, but the parties were unable to do so.

The present grievance, however, arises under the contract of April 30, 1945 which states as follows in Article VII, Section 7, entitled "Seniority":

> "Transfers - An employee desiring to transfer to some department in the plant other than the one he is employed in shall, if transferred, retain his seniority in the department from which he transferred, for a period of thirty (30) days. At the end of this period of thirty days he shall commence to establish a departmental service record in the new department as of his first working day there.
>
> "Employees transferred by Management or employees desiring to transfer in order to fill a vacancy or a new occupation which cannot be filled from the department, in accordance with Article VII, Section 1, shall, if so transferred, carry with them all of their previous departmental seniority for the purpose of promotions and demotions with the new department. Written records of all such transfers shall be maintained within the new department."

Union Contentions

The Union contends as follows:

1. Employee Gomez came into his present department to fill a job as a crane man that could not be filled from the department itself. In conformity with the second paragraph of Section 7 of Article VII, he is entitled to retain full seniority accured in his previous department.

2. This grievance has previously been processed but denied all throughout previous processing and eventually was dropped because the terms of the previous agreements were not clear, and there was a general misunderstanding as to interpretation of transfers. However, the agreement between the Company and the Union entered into on April 30, 1945, clearly defines in Article VII, Section 7, the matter of transfers, and in the opinion of the Union, employee Gomez is entitled to process his grievance under the provisions of the present contract because his present seniority status is in question.

3. Employee Gomez, because he was transferred under the circumstances here prevailing is entitled to bring into the department to which he was transferred, all seniority accumulated by him in the department he was transferred from for use in any future promotions or demotions.

Company Contentions

The Company contends as follows:

1. The Company denies that J. Gomez was transferred by the management to the 46" Blooming Mill as contemplated in the second paragraph of Article VII, Section 7 of the Agreement between the Company and the Union signed on August 5, 1942, which reads as follows:

> "An employee who is transferred from one department to another at the request of the Management shall carry with him whatever service record he had accrued in the department from which he was transferred. In all cases transfers shall clear through the Department of Industrial Relations or General Superintendent."

2. Position of Gomez is and was no different from hundreds of other employees in the older and more established plants of Inland Steel Company who voluntarily left the departments in which they were working to better themselves in the Hot and Cold Strip Mills and the 46" Blooming Mill, all of which came into operation between 1932 and 1937. Men who left their old jobs in this manner did so with the understanding that they were relinquishing established service records in the older departments, but were willing, in fact eager, to make the change in order to be in line for early promotions in the newer and, incidentally, higher paying strip mills.

3. The Company contends that the case of Gomez should not be confused with that of an individual employee who because of his particular skill was requested by the Management to take the same or similar job in one of the new mills as it was built. Obviously the Company feels and has felt right along that, having ordered a man to leave one mill wherein he has rendered years of faithful and skillful service to go to a new mill to assist in the starting of its operation, it owes some special consideration, which is shown in the Mamagement Transfer Clause in Article VII, Section 7 of the Agreement involved in this case and also in the most recent one that was executed on April 30, 1945.

4. Were the Company to fail to distinguish the principle of management transfer from the case of Gomez and the hundreds of others who voluntarily sought and obtained improvement of their work status in the new mills, the seniority status of untold number sof workers throughout the plant would be thrown into a state of confusion and chaos. In fact, to grant Gomez the relief that he personally seeks in this grievance would be not only a repudiation of the Company's established transfer policy and practice for years past, but would be the signal for wholesale requests for seniority changes, which would be certain to work countless hardships, and might cause even Gomez to find his present status challenged by many others.

Discussion

When employee Gomez transferred from the 40" mill to the 46" mill he had already accumulated some seven years' seniority. The transfer undoubtedly was originally made because the Company had requested additional crane operators for the 46" mill as there were no men in that department to fill the new jobs being created. There is no question but that employee Gomez could have refused to make the transfer and it is quite plain from the testimony presented to the arbitrator that the transfer did not originate with his request but upon the request from the supervisor of one department to the supervisor of another department asking for such men as were willing to be transferred. Undoubtedly, some inducement was held out to get men to transfer from one department to another.

There is a conflict in testimony as to just what happened on November 15, 1936 when employee Gomez returned to work after a sickness and after he had spent only one day on the job in the 46" mill, but the arbitrator is satisfied that employee Gomez was more or less induced to remain in the 46" mill section and that he also thought there was better opportunity there. However, this bit of colloquy which may have taken place at the time did not center over the question of what job he would do. It is only fair to suppose that he had in mind that since he transferred at the request of the Company he would not lose such a long period of accumulated seniority, for it is difficult to conceive that he would voluntarily relinquish over seven years' accumulated seniority.

Since employee Gomez' present seniority is in question, the arbitrator if of the opinion that it should be measured in the light of the present existing contract between the parties as that contract can be taken to fairly represent what the parties finally agreed upon as fair, adequate and proper wording of provision with respect to transfers. The language contained in the contract dated April 30, 1945 was no doubt adopted as the result of previous controversies over the matter of transfer.

It appears to the arbitrator that this dispute falls within the purview of the second paragraph of Section 7 of Article VII both for the reason that the suggestion of transfer was first proposed by the Company and secondly, it was the desire of employee Gomez to transfer in order to fill a new occupation which could not be filled from that department. The matter could also be applied to the first paragraph of said Section 7 because notwithstanding the fact that the Company had requested transfers, employee Gomez was free to make a choice and when he chose to transfer it could fairly come within the meaning of the words "an employee desiring to transfer to some department in the plant other than the one he is employed in..."

In view of the record here, as presented to the arbitrator, the arbitrator is of the opinion that the most equitable adjustment of this dispute would be the application of the second paragraph of said Section 7 for the following reasons:

The unlikelihood of employee Gomez voluntarily relinquishing over seven years' accumulated seniority; the satisfactory nature of his services with the Company in his previous department at the time of the transfer, together with his satisfactory record since the date of his transfer, making an accumulated service record of approximately sixteen years. His seniority rights may be of exceptional value to him. Employee Gomez' position that had he at the time supposed that transfer to the 46" mill would have meant loss of seniority which he certainly would not have been willing to lose, carries considerable weight and in all fairness justifies a conclusion in his favor.

The Company has admitted that where an employee makes a transfer at the request of the Company even though he would refuse to do so, he carries with him seniority accumulated in the department from which he transferred. This, of course, is in conformity with the provision of the contract and must of necessity be the established policy and practice.

A decision here in favor of employee Gomez should not be a repudiation of established Company policy and practice for each case will have to rest upon its own merits.

Where an employee, deeming it an advantage to himself, specifically goes to the management and asks that he be transferred into some other department, such a transfer naturally would fail within the purview of the first paragraph of said Section 7 of Article VII. If there are any existing controversies over transfers not yet resolved and as maintained by the Company, a decision here in favor of employee Gomez would be the signal for wholesale requests for seniority changes, each such case must be decided upon the particular facts attendant thereto. This award is not intended to lay down any general rule as the contract relationship between the parties constitutes the proper basis for the resolving of any like dispute.

The fact that certain employees do enjoy greater seniority than does employee Gomez because of the position heretofore taken by the Company with respect to employee Gomez' seniority does not, as a matter of fact, entitle such employees to that advantage. If, as a result of this award, employee Gomez will have greater seniority than other employees who have not beenin the employ of the Company the length of time employee Gomez has, no one has suffered a loss.

As before stated, this award is not intended as a precedent nor as a means whereby other employees may seek to justify their claim for greater seniority. This award constitutes solely a determination of the case of employee Gomez upon the particular facts in his case.

Findings

Based upon the foregoing, the arbitrator enters the following findings:

1. That employee J. Gomez did not voluntarily seek and obtain the transfer from the 40" mill to the 46" mill.

2. That employee Gomez transferred from the 40" mill to the 46" mill in order to fill a vacancy or new occupation which could not be filled from the department.

3. That employee Gomez transferred from the 40" mill to the 46" mill at the request of the Company even though he was not absolutely required to make such transfer.

4. That under the facts and circumstances surrounding the transfer of employee Gomez from the 40" mill to the 46" mill and within the purview of the contract now existing between the parties affecting transfers, he is entitled to carry his full seniority into his present department.

AWARDS

Based upon the foregoing findings, the arbitrator hereby enters the following awards:

Issue One - That the action of the Company in discharging employee John J. Molnar be, and the same is hereby, sustained and the request of said employee for reinstatement be, and the same is hereby, denied.

Issue Two - That the request by employee Otto Gillette for full pay for the time lost by him on account of the suspension invoked by the Company as a disciplinary measure for unauthorizedly absenting himself for vacation purposed be, and the same is hereby, denied.

Issue Three -That the employees involved in this issue be paid at the rate of their regular job for work done during mill down turns; and that the Company forthwith reimburse said employees for any loss suffered by them as a result in the change in method of payment inaugurated by the Company on November 23, 1944.

Issue Four - That the service record of employee J. Gomez in his present department include for matter of future promotions or demotions, all seniority accumulated by him in the department from which he was transferred.

Entered at Chicago, Illinois this 24th day of January, 1946.

(Signed)_____
Jacob B. Courshon, Arbitrator