In the Arbitration Matter
between
The Inland Steel Corporation
and the
United Steelworkers of America
Local 1010.
Both of East Chicago, Illinois

ARBITRATION NO. #30

Decision.

1. Pursuant to a joint letter to the Director, U.S. Conciliation Service dated April 26, 1946, by L.B. Luellen, Assistant General Superintendent, Inland Steel Company and Joseph B. Jeneske, Representative, United Steelworkers of America, Local 1010, Jacob J. Blair was appointed as sole Arbitrator.

2. A meeting between the parties was held in the offices of the Company in East Chicago, Indiana on July 16, 1946. At this meeting the Company was represented by Messrs. Pope and Ballard- Wm. F. Price, Counsel; W. A. Blake, Industrial Relations Director; Fred M. Gillies, Works Manager; and L. B. Luellen, Assistant to General Superintendent. The Union was represented by Messrs. Joseph B. Jeneske, Representative; and Harry Powell, Grievance Committeeman, #2 Open Hearth.

3. Briefs filed by each of the parties were received on and before August 20, 1946, this being the date of a letter received from the Company in reply to the Union "rebuttal" brief.

THE ISSUE.

4. These proceedings are held under the provisions of Article VI, Section 7, Stip. #6 of the Agreement dated April 30, 1945.

5. After considerable discussion, it was also agreed by the parties to proceed under the statement of the issue as shown on the Grievance dated October 5, 1945. (Record p. 185, Company Brief, p. 3). The Grievance reads as follows:

> "The Union contends that the practice of including all furnace delays such as scrap, bottom, banks, brick work, etc. as tonnage production is in direct violation of Section 3, Article III of the Agreement.
>
> "The Union contends the practice known as 'pool gas turns' is in direct violation of Article III of Section 3 of the Agreement.
>
> "The Union contends the retroactive date in both above instances shall be July 31, 1942.

6. Under this statement of the issue as shown on the Grievance it is clear that the basic questions raised are the allegations that the practice of distributing tonnage earnings on the Open Hearth over time lost by delays, together with a similar practice in distributing earnings paid for "pooled gas turns" are in violation of Article III Section 3 of the Agreement dated April 30, 1945. There is also the issue of the retroactive date, if any, to which any award will be effective.

7. In addition to these three issues, apparent in the statement of the Grievance, the parties also considered other issues of a subordinate nature. Among these issues were, first, the minimum time upon which delay time was to be computed, the hourly rate as related to the presenttonnage rate which should apply (Record p. 39) and the effect of technological improvements on loss of tonnage earnings through delays. (Record pp. 7,154 and 156.)

8. The Arbitrator has no authority to consider any one of these subordinate points. At the hearing it was made clear to the parties that in the absence of any agreement to the contrary, this case would be decided under the statement of the issue as shown on the grievance previously quoted. (Record p. 185). Accordingly, the effect of technological improvements on tonnage earnings must be excluded since such matters fall under other provisions of the Agreement, than Article III Section 3 as set forth in the grievance. Consideration of the units for computing delay time and the appropriate hourly rate also must be excluded since the Company, as one of the parties to this proceeding has refused to authorize the submission of these issues. (Record p. 17, 170 and 175). This act of the Company precludes further consideration of this point by the Arbitrator since it is well established that the authority of an Arbitrator is strictly limited to issues submitted to him jointly.

9. A restatement of theissues to be considered in this decision is whether or not the present wage payment plan, which averages tonnage earnings and "pooled gas turns" over a fifteen day period, instead of considering each day's earnings separately is a violation of Articel III Section 3 of the Agreement dated April 30, 1946. The issue of the retroactive date has also been raised.

Contentions of the Parties.

10. Both parties argued this issue under Article III Section 3 of the Agreement dated April 30, 1946. This provision of the Agreement reads as follows:

> ARTICLE III - Wages
>
> "Section 3. In compliance with the Directive Order of the National War Labor Board dated July 16, 1942, the Company agrees that each employee (except apprentices) shall be guaranteed and shall receive for each day's work an amount which shall be not less than 78¢ multiplied by the number of hours worked by him on that day, but if such employee's fixed occupational hourly rate is more than 78¢, the Company agrees and guarantees that he shall receive for each day's work an amount which shall be not less than his fixed occupational hourly rate multiplied by the hours worked by him that day, and in accordance with the over-time provisions of Article V, Section 2. Further, in no case shall a worker receive for a given day less than the amount earned by him as a result of the application of piecework, tonnage or production rates.
>
> "This minimum daily wage guarantee shall become effective as of the date of the Directive Order (July 16, 1942). If any changes in the rate structure are effected as a result of this guarantee, such changes shall be effective as of the date upon which the Union and the Company agree upon said changes.

"It is to be understood that the negotiations between the parties over any necessary adjustments in the incentive, tonnage or piecework rates shall proceed on the assumption that the Company will not have to bear any substantial direct additional wage costs and that the pay for performing a given quantity and type of work will not be decreased." (My underscoring for clarification.)

11. The Union contends that under Article III Section 3 "a rate should be paid for any interruption in furnace production in excess of an hourly period since the worker is guaranteed by contract 78 cents per hour plus 18½, and is further guaranteed that "in no case shall a worker receive less than the amount earned by him as the result of the application of piece work tonnage or production rates." (Record p. 39). In their rebuttal brief, this contention is clarified somewhat to provide, "The Union admits the pooling of tonnage earnings appears to be the only logical method of payment, provided, however, delays are handled separate and apart from tonnage earnings." (Union rebuttal brief, p. 3).

12. The Union supports its contention that delays should be paid for separately from tonnage earnings by reference to that part of Article III Section 3 providing for a minimum guarantee of 8 hours multiplied by the labor rate (Record p. 13, 150 to 153 incl.)

13. The Company in its principal arguments, holds that this Grievance must be denied.

14. First, it is argued that this Grievance is simply a disguised request for a wage increase for tonnage workers on the Open Hearth and must be denied since rates are frozen under the Contract.

15. It was also held that the Company is in full compliance with Article III Section 3 since daily earnings in no case are less than the premium guarantee provided in the disputed Article, amounting to 8 hours multiplied by the labor rate. Money would be added to the pool to bring earned rates per day up to this minimum in the event that pooled tonnage rates would be inadequate (Record p. 55.)

16. In its Brief, as well as at the hearing, the Company argued that any changes in Section 3 are precluded from consideration, under commonly accepted principles of law, since by its prior position in the Argeement as well as by custom and usage the parties have agreed to accept the conditions of Section 2 of Article III, providing that, "Nothing in this Agreement shall conflict with any bonus or premium system now in effect." (Company brief p. 5 to 13 incl.)

17. Finally, the Company holds that the changes sought by the Union are not practical under the conditions of Open Hearth Furnace production and must therefore be denied (Record pp 97, 166 and Company Brief p. 18 to 22 incl.)

18. The Union claims that if their grievance is answered in the affirmative, then any wage adjustment due should be retroactive to July 31, 1942, the date when Article III Section 3 became effective.

19. This claim was also denied by the Company on the grounds that Article III Section 3 specifically provides that any changes in the rate structure effected as a result of this guarantee, "Shall be effective as of the date upon which the Union and Company agree upon said changes."

Findings of Fact.

20. The Wage payment plan which the Union alleges violates Section 3 of Article III can be explained by the following generalized formula:

$$E = \frac{TR + GRn.}{N}$$

E - Earnings per man per turn.
T - Total Tons of steel produced in pay period of 15 days, either by furnace or by department depending upon unit used in computing tonnage earnings.
R - Rate per ton which varies by job classification.
G - Number of "pooled gas turns" or delays exceeding 8 consecutive hours when steel is not being produced in the furnace.
Rn Rate per hour applicable to Gas turns only.
N - Number of man turns.

21. Article III Section 3 has already been quoted in Paragraph 10, the pertinent part of which provides, "..the Company agrees that each employee (except apprentices) shall be guaranteed and shall receive for <u>each day's work an amount which shall be not less than 78¢ multiplied by the number of hours worked by him on that day.</u>" or his occupational rate and, "<u>Further, in no case shall a worker receive for a given day less than the amount earned by him as a result of the application of piecework, tonnage or production rates</u>" (My underscoring for clarification).

22. An analysis of the wage payment plan as explained by the formula shows clearly that the Company practice of averaging tonnage earnings and pooled gas turns over a 15 day pay period violates two parts of Article III Section 3. In the first place the practice violates that part of this Section reading, "Further, in no case shall a worker receive for a given day less than the amount earned by him as a result of the application of piece work, tonnage or production rates." By the use of this wage payment plan, earnings on one day may be averaged against earnings on 14 other days in the pay period, thus changing, by either reducing, or increasing, the amount the worker may have earned on this one day.

23. The practice also violates the condition of Section 3, "that each employee (except apprentices) shall be guaranteed and shall receive for each day's work a amount which shall be not less than 78¢ multiplied by the number of hours worked by him on that day, but if such employee's fixed occupational hourly rate is more than 78¢, the Company agrees and guarantees that he shall receive for each day's work an amount which shall be not less than his fixed occupational hourly rate multiplied by the hours worked by him on that day and in accordance with the overtime provisions of Article V, Section." Under the present wage plan, only time lost on account of delays, in excess of eight consecutive hours is compensated for. Accordingly it is possible, and the Union alleges that such incidents are increasing in frequency, that those employed on the Open Hearth do work for major parts of some days without compensation as required under Article III, Section 3.

24. In its Brief the Company admits that the present wage plan does violate Article III Section 3. "The Company admits that its present system of tonnage rates for the Open Hearth furnace crews does not comply with the above provisions of Section 3 when you put on blinders and look at Section 3 alone." (Company Brief p. 7).

25. While admitting the many difficulties inherent in resolving this case, the Arbitrator does not agree with the Company that these difficulties and the alleged inconsistencies of Section 2 and 3 prevents the consideration of this matter. The difficulties of setting up the minimum daily guarantee and the further provision that the amount earned on a given day will not be reduced can be resolved through negotiation. Thealleged inconsistencies of Section 2 and 3 are not in point since this case involves both tonnage and hourly rates of pay and not the whole of the bonus or premium system in effect. These rates can be considered and negotiated under the permissive conditions found in the preamble to Article III Wages.

26. In addition to these contractural conditions, the fact that this matter has been considered in negotiations as well as in the grievance procedure, shows clearly that the Union as one of the parties has recognized the need to clarify Section 3 of Article III. In the light of these facts, it must be held, therefore, that this question is properly before an Arbitrator and that the present wage plan is in violation of Article III Section 3.

27. The request of the Union that the effective date of the minimum daily wage guarantee be July 31, 1942, the date of the Directive, must be denied on the clear meaning of Article III Section 3 providing that, "any changes in the rate structure effected as a result of this guarantee,...shall be effective as of the date upon which the Union and the Company agree upon said changes."

28. The part of Article III Section 3 clearly established that any rate structure developed by negotiation is to be effective on the date that such agreement is reached. The Union request that this decision be made retroactive to July 31, 1942 is, therefore, denied.

DECISION

In view of all the facts and arguments offered by the parties, both orally and in writing, and particularly the clear intent that under Article III Section 3 a minimum daily guarantee of earnings was to be established, it is held that:

The present practice of the Company of averaging tonnage earnings and pooled gas turns over the pay period is in direct violation of Article III Section 3 of the Agreement dated April 30, 1945.

In view of the clear meaning of Article III Section 3, the adjustments determined by the parties in negotiation as necessary to establish compliance with Article III Section 3 are to be effective on the date of such agreement. The Union request that the retroactive date be established as of July 31, 1942 is therefore denied.

The adjustments necessary to establish compliance with Article III, Section 3 are remanded back to the parties for negotiation since such adjustments are beyond the scope of the grievance submitted as a statement of the issue in this case, and hence beyond the authority of the arbitrator.

/s/_____
Jacob J. Blair, Arbitrator

Dated in Pittsburgh, Pa., October 24, 1946.

RECOMMENDATION

Both parties are familiar with the complexities of this case. Complexities made more difficult by the conditions of Article III, Section 3. As pointed out in the Company Brief and also referred to by the Union during the course of the hearing, these complexities appear to center about the question of the adjustments necessary to bring the Company into compliance with the minimum daily guaranteed wage as provided for in Article III, Section 3. What these adjustments are or should be is clearly beyond the scope of the arbitrator to determine. The fact, however, that they are basic to the final conclusion of this case encourages the arbitrator to believe that the parties may find a recommendation from him to be helpful.

Since a recommendation is neither final and binding upon the parties, nor prejudicial to the position held by either of them with respect to the contentions involved, the arbitrator feels privileged to speak rather frankly about matters which are precluded to him under the statement of the issue as contained in the grievance and the understanding of the parties when this matter was referred to arbitration.

Uppermost in the mind of the arbitrator is the fact that this question has been pending since the spring of 1945. It is axiomatic that both parties to a labor agreement are obligated to dispose of grievances as promptly as possible. In this regard it is the earnest hope of the arbitrator that the parties will meet at their very earliest convenience upon the receipt of this decision and conscientiously seek a fair conclusion to the question of the adjustments necessary to bring about compliance with Article III, Section 3. If after a reasonable period - such as the parties may determine - agreement is not reached, then the arbitrator urges the parties to submit such questions to arbitration for final determination.

In working out the adjustments necessary to bring compliance of the tonnage rate system with the conditions of Article III, Section 3, the Arbitrator calls attention to:

1. "It is to be understood that the negotiations between the parties over any necessary adjustments in the incentive, tonnage or piecework rates shall proceed on the assumption that the Company will not have to bear any substantial direct additional wage costs..."

2. "..that the pay for performing a given quantity and type of work will not be decreased."

The matter of the retroactive date is of course a part of my decision.

A narrow interpretation of point 1 and 2 of Article III, Section 3 as enumerated above would suggest to the parties almost insuperable difficulties. Both parties, however, are highly skilled in the art of negotiation as well as in the knowledge of the problems confronting them in negotiating the necessary adjustments. In the light of these skills, therefore, the arbitrator believes that the parties will be able to find a basis for negotiating the necessary adjustments which are within the intent of the two points as quoted above. In this connection reference is made to the decision of Mr. Rosenshine in the Bethlehem Steel and United Steelworkers case of April 25, 1944. Except for the limitations imposed upon the arbitrator by the parties and the difference between the work involved

in the Rosenshine case which concerned employees in a warehouse as compared with employees in the Open Hearth in the instant case, the Arbitrator feels that this decision should be very helpful and much in point. He likewise calls attention to Company Exhibit "G" covering contract provisions of the Youngstown Sheet and Tube Company, Bethlehem Steel Company, Carnegie-Illinois Steel Corp., Republic Steel Corp.. Even if the parties could not agree on contract provisions similar to these, it is still possible to work out within the limitations of Article III, Section 3, a tonnage rate for Open Hearth employees which will establish compliance with the intent of this Section. Under this approach it seems probably that tonnage rates would have to be adjusted downward in order to satisfy the condition that "..the Company will not have to bear any substantial direct additional wage costs..". The reduction in the tonnage rate however should be in that proportion necessary to cover minimum daily guarantee so that in the end the second provision of Article III, Section 3"..that the pay for performing agiven quantity and type of work will not be decreased." In the overall take home earnings of the employees.

/s/_____
Jacob J. Blair, Arbitrator

Dated in Pittsburgh, Pa., October 24, 1946.