

In the Arbitration between:)	Arbitration No. 35
)	
Inland Steel Company)	Before
(Indiana Harbor, Indiana))	Harold M. Gilden
)	Arbitrator
and)	
)	Hearings, September 14 and
United Steelworkers of America)	16, 1948.
Local 1010, CIO)	

REPORT AND DECISION OF ARBITRATOR

This arbitration involves three issues submitted for award to Harold M. Gilden. Hearings were held at Indiana Harbor, Indiana, on September 14 and 16, 1948, at which all parties were represented and fully heard. The Union was represented by Joseph Joneske, International Representative, Harry Powell, Local President, O. H. McKinsey, Chairman Grievance Committee, John Sargent, Peter Calacci, and Harold Kraft. The Company was represented by William Price of Pope and Ballard, Attorneys Lee B. Luellen, Assistant to General Superintendent, William A. Blake, Superintendent Labor Relations and Herbert Lieberum, Divisional Superintendent of Labor Relations.

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NATURE OF CASE

On April 29, 1947, the Company and the Union had not yet reached an agreement on the terms of a new contract to supercede the 1945 agreement due to expire at midnight the following day. Knowing that no work would be performed by the production employees in the absence of a continuous contractual relationship, the Company proceeded to take steps to shut down its facilities. In accordance with these plans at 5 P.M. on April 29, Jim Kiser, General Slab Yard Foreman notified Victor Kaminski and Ezra Prady, two of the five slab yard employees on the 4 to midnight turn, not to report for work the next day. The Company contemplated shutting down the 76" and 44" Hot Strip Mill furnaces during the 8 to 4 turn, and a two man crew would be ample to carry out necessary work assignments on the night shift. At 11 a.m. on Wednesday, it was decided to charge link slabs through the 44" mill furnaces on the 4 to 12 turn in order that the furnaces could be repaired as soon as production again was resumed. This work usually required about 2 hours from the full crew of five men. Three of the men regularly scheduled to work this night turn were due to report (one of these persons was off work on Tuesday and was not notified of any scheduling change,) and, therefore, at least two more persons were, needed. Jim Kiser made no effort to communicate with Kaminski and Brady to tell them to report, but instead requested the five men on the day turn to double over. These men didn't want to stay on for only a couple of hours, and he assured them that they could work the normal turn. One of these persons was scheduled to complete an inventory, and the other four, plus the three persons on the night turn, worked the full 8 hours handling the link slab job and other assignments.

On May 16, 1947, the following grievance was filed:

"Aggrieved (Victor Kaminski and Ezra Brady) ordered to stay home for the 4/12 turn Wednesday 4/30/47 while the 8/4 turn worked 16 hours. Union contends violation of Article V, Section 6 (old agreement). Request lost time."

Union's Position

1. Management inadvertently failed to notify the slab yard prior to 11 a.m. Wednesday of the need to charge link slabs into the furnace.
2. When it became apparent that such work would have to be performed the Company was obligated to recall Kaminski and Brady to work.
3. The Company's failure to make any attempt to notify these men to report for work, although sufficient time was available constitutes an indiscriminate change in work schedules in violation of the contract.

Company's Position

1. The impending strike and the attendant obligation to make certain that the plant would be ready to go down by the strike deadline did not permit any vagueness about the attendance of essential personnel.
2. The necessity to charge the link slabs was more certain than the possibility that the foreman could have successfully contacted the two aggrieved employees.
3. Under existing circumstances, the re-scheduling of the last turn did not impose on the Company any contractual duty to recall these men. In the fact of such an emergency the primary responsibility was to make certain at the earliest moment that the turn would be filled by the best qualified workmen available.
4. That the Company's conduct did not contravene Article V, Section 6, but was entirely consistent with the prerogatives reserved to Management in Article XI.

Discussion

The 1945 contract contains the following provisions:

ARTICLE V

Hours of Work

Section 6. Determination of the starting time of daily and weekly work schedules shall be made by the Company and such schedules maybe changed by the Company from time to time to suit varying conditions of the business. However, indiscriminate changes shall not be made. Changes deemed necessary by the Company shall be made known to the departmental representative of the Union as far in advance as is possible. If it is alleged that indiscriminate schedule changes have been made, they shall be subject to normal grievance procedure.

ARTICLE XI

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 and discharge employees for cause, and to relieve employees because of lack of work or for other legitimate reasons, and the right to introduce new and improved methods or facilities, and 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 purpose of discrimination against employees because of membership in or activity on behalf of the Union. These provisions shall not apply to nullify the other provisions of this Agreement.

It cannot be successfully argued that the Company's original decision to cancel the work schedules for Kaminski and Brady on Wednesday, April 30, was in anywise improper. Plans at that time were to have the 44" Hot Strip Mill go down at 4 P.M. on Wednesday and, in this event, a skeleton crew on the last turn would have been adequate. The evidence does not support the claim either that the job of charging link slabs through the furnaces was an integral part of the shut-down operations, or that the Company should have anticipated that such work would be required. There is no showing that the decision to charge line slabs through the 44" furnaces was unduly delayed. It must be presumed that such decision was made as soon as the Company determined that it was feasible to have the furnaces in readiness for repair immediately after the labor dispute was resolved. These matters are properly within the Managerial functions set forth in Article XI.

But all justification for changing Kaminski's and Brady's work schedules for Wednesday, April 30, is removed, if there was ample time to notify them of this new situation. Kiser testified that he received instructions at 11 A.M. on Wednesday to arrange to charge link slabs during the 4-12 turn. Kiser said that there were so many other details and last minute instructions to take care of that he wanted to report back to his supervisor as quickly as possible that a crew had been lined up. Kiser decided, under the emergencies of the moment, that the best thing to do was to hold over the day turn to perform the link slab job. He made no effort to contact Kaminski and Brady during the five hours between 11 A.M. and 4 P.M. to advise them of the change in work requirements, and offer them the opportunity to report on their regular turn. There is no indication that this interval of time was insufficient to notify these two men to come to work.

The Company is firmly committed by the terms of Article V, Section 6 to refrain from making indiscriminate changes in work schedules. The language of this clause does not contain any exceptions to this strict prohibition. Accordingly, if a work schedule is indiscriminately changed, the contract is violated, regardless of whether such change takes place during an emergency or during periods of normal operation. Clearly, if the decision to charge link slabs was made at 5 P.M. on Tuesday, April 29, instead of 11 A.M. on Wednesday, April 30, there could be no doubt that the cancelling of Kaminski's and Brady's work schedules on the following day would be an indiscriminate change. The only basis on which the initial scheduling change for Kaminski and Brady is free from any indiscriminate taint is on the theory that there was no work available for them on their regular shift. But when

the prospect of work opportunities became real, prior to the time when they were normally scheduled to report, their right to perform this work was superior to that of other persons. The Company would be relieved of the obligation to make such work available to them only if attempts to communicate with them proved unsuccessful.

The Arbitrator concludes, therefore, that the Company's failure to rescind the cancellation of Kaminski's and Brady's work schedule was, in effect, and indiscriminate schedule change in violation of Article V, Section 6.

AWARD -

That the Company forthwith shall remunerate Victor Kaminski and Ezra Brady for all loss of earnings on the 4-12 turn on April 30, 1947.

Respectfully submitted

Harold M. Gilden
Arbitrator

October 18, 1948.