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In the Arbitration between	)	Before:
	)	Harold M. Gilden,
Inland Steel Company	)	Arbitrator
(Indiana Harbor Works)	)	
	)	
and	)	Hearing:
	)	January 28, 1949
United Steelworkers of America,	)	
Local 1010, CIO	)	

REPORT AND DECISION OF ARBITRATOR

The identical issue raised in three separate grievances (Cases 16-C-12, 16-C-29, and 16-C-36) was submitted by agreement of the parties to Harold M. Gilden for an award. A hearing was held at Indiana Harbor, Indiana, on January 28, 1949, at which all parties were presented and fully heard. Appearances for the Union were Joseph Jeneske, International Representative; O. H. McKinsey, and Harold Kraft, Grievance Committeeman. The Company was represented by W. A. Blake, Superintendent of Labor Relations; John A. Keckich, Divisional Supervisor of Labor Relations; W. J. Walsh, Assistant Superintendent, Tinplate Department; Edward Howell, Assistant Provider 44" Hot Strip; and, E. K. Brown, General Pickle House Foreman, Cold Strip.

Issue

Is the Company required to pay time and one-half for work performed on the sixth day of the established work week in instances where employees originally scheduled for six days of work are laid off on one of the previous work days at the Company's direction?

Nature of Case

Grievance 16-C-12 was filed July 15, 1947 on behalf of Tony Lickwar, George Binder, and Joseph Bukovich, who were employed on the "A" line in the cold strip pickle house. In the week of June 16, 1947, these men were scheduled to work six consecutive days, Monday through Saturday. After the beginning of the work week deliveries to the hot strip mills fell off on account of an abnormal number of off heats in the open hearths, and in turn the hot strip failed to fill expected shipments to the coil pickle house in the cold strip mills. Because of these events the Company eliminated the 12-8 turn on Wednesday from the grievers' work schedule, and notified them of the schedule change at least eight hours before their reporting time. The grievers resumed work on Thursday and completed the balance of their original work schedule.

In Grievance 16-C-36, filed October 7, 1947, the grievers Terry, Binder, Lickwar and Bukovich, were scheduled to work six consecutive days, Monday through Saturday, beginning September 15, 1947. Once again, the hot strip mills failed to fulfill their usual deliveries and the Company dropped the crew on the "A" line

(the grievers) on the 8-4 turn Wednesday, September 17th. These men were given due notice of the change in schedule, and they resumed work on Thursday, and continued to work the balance of their scheduled work week.

Grievance 16-C-29, filed September 4, 1947, involves Lickwar, Bukovich, Binder and Culasy. They were scheduled to work on the "A" line (12-8 turn) for six consecutive days, Monday through Saturday, beginning August 18, 1947. In this instance, a climatic heat caused a steel jam at the tinplate washers and backed steel up to the Five Stand Tandem Division in the cold strip mill, thereby eliminating storage space for the coil pickle lines. As a result, the Company found it necessary to drop the "A" line crews on both the 12-8 and the 8-4 turns for Wednesday. Due notice was given to the members of both crews. The grievers resumed work on Thursday and continued through the balance of their work schedules.

Union's Position

1. That in all three grievances the contractual requirements have been fulfilled; the Saturday work was payable at time and one-half, and the grievers are entitled to such premium pay for the days here in question.

2. The employees in these cases were scheduled to work on five of the first six days of the work week, thereby satisfying the basic requirements of Article 6, Section 3(c)3; in fact, their work schedule of six days exceeded the minimum requirement. They were directed, through no fault of their own, to stay home on one of the days for which they were scheduled to work, and consequently, the one-day lay-off should be counted as a day worked for purposes of computing the sixth day.

3. If the Company's interpretation is correct, i.e., that Saturday must be worked "instead" of the day of lay-off before Article 6, Section 3(c)3 becomes applicable, this clause could be nullified in the event the Company uniformly scheduled all employees six days per week, and later arbitrarily directed that they take off one day.

4. The clear intent of the applicable contract provision is to count as days of work those days on which employees are directed to lay off through no fault of their own.

5. The fact that the same situation involving practically the same employees recurred several times after filing the first grievance refutes the claim that the scheduled changes were the result of emergencies.

Company's Position

1. The language of Article 6, Section 3(c)3 is clear in intent and meaning and must be literally applied. This section is not applicable to the facts here involved.

2. The first of these cases (Grievance 16-C-12), as originally filed, alleged that the men were scheduled for five days, Monday through Friday. When the Grievance Committeeman

was advised of the error in that the men were scheduled for six days rather than five days, he recognized the inadequacy of Article 6, Section 3(c)3 as a basis for the grievance and reverted to the claim that the schedule change must be considered as being an arbitrary one.

3. The changes in work schedules were made necessary as a result of unforeseen developments and they cannot be considered either arbitrary or indiscriminate. Article 6, Section 5 reserves to the Company the right to change work schedules when required to meet changes in business conditions.

4. Article 6, Section 3(c)3 relied on by the Union applies only where an employee (1) is scheduled to work five days of the first six days of the work week, and (2) is subjected to a change in schedule whereby work on either the sixth or seventh day is substituted for work on a prior scheduled day. The word "instead" in section 3(c)3 cannot be ignored. In the instant case, the employees worked on Saturday as part of their regular schedule; they did not work on Saturday in place of the day they were laid off.

5. To accept the Union's contention of the meaning of Section 3(c)3 would require the words "or sixth" to be read into and the word "instead" to be read out of that section. Such action would be contrary to the recognized principle of contract interpretation that clear and unambiguous language must be recognized and given full effect.

6. The contract provisions do not evidence any intent to make Saturday and Sunday premium days as such. The issue therefore is not of spoiling the premium day, but of determining when that premium day comes into existence.

7. Off-period planning of employees scheduled to work six days is not adversely affected if one of the work days is canceled. The result is merely an additional day of rest. The obvious purpose of Section 3(c)3 was to compensate the five-day schedule employee for the inconvenience and interference of canceling his personal plans when he was required to go out and work on one of his rest days. The language of Section 3(c)3 is clearly limited to the five-day situation. The arbitrator cannot assume that it was intended to apply to or reach the same result in both cases.

8. The argument that the acceptance of the Company's construction of Section 3(c)3 would permit the circumvention of that section is without foundation. Bad faith on the part of the Company cannot be presumed. If the Company did change work schedules for the sole purpose of avoiding overtime payments it would be guilty of an arbitrary change of schedules in violation of Article 6, Section 5.

Discussion

The Labor Contract contains the following provisions:

ARTICLE VI

Hours of Work and Overtime

Section 2. The work week shall be seven (7) consecutive days, commencing at 12:01 A.M. Monday. ****

Section 3. Time and one-half shall be paid for:

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(c) Hours worked on the sixth day and seventh consecutive day worked in the work week, subject to the following provisions:

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(3) When an employee scheduled to work on five (5) days of the first six days of a work week is, after the beginning of the work week in question, directed to lay off one or more days for which he was scheduled in said work week and works instead on the sixth or seventh day of said work week, or on the sixth and seventh day of said work week, the day or days he was so laid off shall be credited as a day or days worked in said work week for the purpose of determining the sixth day or seventh consecutive day worked in said work week.

Section 5. Determination of the daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time. In the non-continuous operating departments the Company shall, where practicable, make reasonable effort to schedule employees so as to avoid working them on Sunday.

To accommodate the off period planning of employees, the Company shall, insofar as reasonably possible, and consistent with proper, efficient and economical operation of the plant, post work schedules for periods not less than a work week in locations where they can be readily observed by those affected twenty-four (24) hours before the end of their last turn worked in the work week preceding the work week for which the schedule is posted. Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made. In this connection it is recognized by the Union that changes required by power or mechanical breakdown or other conditions beyond the control of the Company or because of a changed condition in the business of the Company are not arbitrary changes in schedules and that such causes may require changes therein at any time. If it is alleged that arbitrary schedule changes have been made, they may be the subject of a grievance, including arbitration. The Company shall notify the employee or employees involved of changes in the posted schedules as far in advance of the time effective as is reasonably possible.

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There is no sound reason to doubt either the good faith or the need for the particular schedule changes which occurred in the three grievances included in these proceedings. The Company's claim stands unrefuted that the circumstances dictating the several schedule disruptions were neither predictable nor avoidable. There is no room to argue, on this state of the record, that the schedule changes are indiscriminate and, accordingly, that question does not bear upon the disposition of the arbitrable issue.

In Article 6, Section 3(c) the Company is committed to the payment of time and one-half for work performed on the sixth and seventh day worked in the work week. Sub-paragraph 3 of the same section provides that under certain conditions the day or days of the Company-directed lay-off shall be counted as worked for purposes of determining overtime eligibility.

The Company insists that Section 3(c)3 must be interpreted literally, i.e., that it must be held applicable only to a five-day work schedule, and consequently persons who are scheduled for a six or seven day work week are not entitled to its benefits. On the Company's theory, the employee who is scheduled to work from Monday through Friday, (5 days) and laid off on one of those days, would be paid overtime for his work on Saturday, but an employee scheduled from Monday through Saturday (6 days) and similarly laid off on one of the week days, would work Saturday at a straight time rates. Furthermore, the Company says, it should not suffer overtime penalties for schedule changes which are not violative of Article 6, Section 5.

Admittedly Article 6, Section 5 preserves the Company's right to change work schedules for good cause and it protects against the arbitrary abuse of such discretion, but the proper exercise of that prerogative does not necessarily cancel or absolve the obligation to pay such overtime rates as may be provided in other contract clauses.

Obviously, the off-period planning of the man on a Monday to Friday five-day work week is spoiled in the event of a schedule change that requires work on a Saturday or Sunday. But by the same token, a man on a six-day schedule cannot plan a long week end because his work schedule interferes. In either case there is the same clash between work assignments and personal pursuits. The measure of consolation in both instances is the premium rate, and no valid basis exists to justify the application of Section 3(c)3 in the one case and not in the other.

Particularly, Section 3(c)3 holds that the schedule change shall not impair or prevent premium pay eligibility for work which would carry the premium rate had the change not been made. This provision safeguards against a week-day lay-off depriving a man of overtime for work on Saturday or Sunday. The clear intention expressed in the language of Section 3(c)3 is to assure overtime rates for work which, were it not for a Company-directed lay-off, would call for time and one-half.

The basic concept so plainly stated in Section 3(c)3 is in no wise altered by the reference to a five-day work schedule. Once

such intent is made evident with respect to a five-day schedule it must also carry over to a six or seven day schedule to avoid an inconsistent contractual application in parallel situations. The mention of a five-day schedule is only incidental to the principal thought. The word "instead" is significant only when you are dealing with a five-day work schedule, and the lay-off does not exceed one day. Surely it cannot be seriously urged that a person who is directed, after starting the work week, to lay off four days previously scheduled and to work on an unscheduled Saturday or Sunday, works the one day "instead" of the four day lay-off. "Instead", as used in Section 3(c)3, neither limits the counting of a day of absence to five-day work schedules, nor does it obscure the parties' purpose to grant time and one-half for work which, without the schedule change, would have been performed on a premium day.

If the Company's interpretation was upheld a precedent would be established encouraging plant-wide six-day scheduling to minimize overtime penalties. Such a practice would enhance opportunities to abuse scheduling prerogatives, and it would reduce Section 3(c)3 to a nothingness.

Award

The Company shall pay to the employees involved in Grievances 16-C-12, 16-C-29, and 16-C-36, the difference between time and one-half and the straight time rates heretofore paid to them for all hours worked by them on the particular Saturdays dealt with in these grievances.

Respectfully submitted,

(signed) HAROLD M. GILDEN

Harold M. Gilden
Arbitrator

April 20, 1949.