#35

IN THE ARBITRATION MATTER

between

THE INLAND STEEL COMPANY
Indiana Harbor Works

and

LOCAL 1010
UNITED STEELWORKERS OF AMERICA

ARBITRATOR
Jacob J. Blair

Hearing held in conference room of Company offices, Inland Steel Company, Indiana Harbor Indiana, January 21, 1949

Briefs were received from the parties on or about March 14, 1949

APPEARANCES

For the Company

W. A. Blake, Supt. of Labor Relations
L. B. Luellen, Asst. to General Supt.
L. R. Berner
Herbert Lieberum

For the Union

Joseph Jeneske, Int'l Repr.
Harry Powell, President, Local 1010
Casimir Krivickas, Grievance Committeeman
O. H. McKinsey, Grievance Committeeman

On December 16, 1948, a joint letter was received from W. A. Blake, Superintendent, Labor Relations, Inland Steel Company and Joseph Jeneske, Representative, United Steelworkers of America advising the undersigned that he had been agreed to by the parties as arbitrator in a matter identified as Grievance No. 5-C-6. This notice of designation was confirmed with the parties in a letter dated December 20 and a hearing was finally set for January 21. Following the hearing the undersigned requested certain information from each of the parties and argument on points raised during the course of the hearing. This information and argument was received on or before March 14, 1949.

At the hearing it was agreed by both of the parties that the issue would be submitted based upon the written grievance. (Record pp. 3 and 4.) A copy of the original grievance is shown below;

GRIEVANCE REPORT

This grievance is being filed in writing following verbal discussion with Foreman George Lawton

Grievance No. 5-C-6

January 2, 1948

#2 Open Hearth

STATEMENT OF GRIEVANCE AND RELIEF SOUGHT:

Inasmuch as grievance case # 5 B 13 has never been satisfactorily adjusted despite an arbitration award find the company in violation of the terms of the labor agreement dated and signed April 30, 1945, and directing them to negotiate within the terms of that agreement.

Aggrieved maintain that the standard base rate for each job class in question as negotiated under the terms of the Inequity Agreement must be the hourly rate for all hours not compensated for under the straight tonnage rate.

Aggrieved further maintain that retroactivity must be paid from a reasonable period following the arbitrator's decision inasmuch as the single proposal put forward by management was in violation of the terms of the later agreement and since it was obviously to management's benefit to tail to negotiate within the terms of the contract.

Violation is claimed of Article XIV, Section 4 of Agreement.

Tonnage employees

Signed, Harry H. Powell,
Rep.

Supt.'s Reply

Under date of 12/14/46 a wage payment rate was developed which would have complied with the terms of the contract and at the same time comply with the Arbitrators decision. This proposal was, in our opinion, the only method that would satisfy both conditions named above. The grievance man found this proposal unacceptable yet each of his counter proposals were contrary to the arbitrators recommendation and would have been in violation of the contract.

Reply date: Jan. 8, 1948. Signed: G. Lawton
Supt. #2 Open Hearth.

BACKGROUND AND ISSUE

From the grievance it is clear that the question involved is whether or not the Company has complied with the previous arbitration award, dated October 24, 1946 in which the parties were directed to negotiate a wage payment plan in the Open Hearth Department within the meaning and intent of Article 3, Section 3 of the 1945 Agreement. A second question involved is whether retroactivity is justified under the facts of this case.

The background of the issue goes back to a grievance identified as 5-B-13 filed on October 5, 1945. In this grievance the Union alleged 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 3 of the Agreement." It was also alleged by the Union that the practice known "as 'pool gas turns' is in direct violation of Article 3, Section 3 of the Agreement" and "the Union contends the retroactive date in both above instances shall be July 31, 1942."

In an award by the undersigned date October 24, 1946 the contention of the Union with respect to the inclusion of all furnace delays as tonnage production was sustained as a violation of Article 3, Section 3; the contention with respect to the retroactive date was denied under the clear language of the same article. The undersigned remanded back to the parties the question of negotiating a settlement of this question because of the limitations placed upon his authority by the parties at the time of the hearing. He accompanied his award with a recommendation based upon the disputed provision of the Agreement and the method of resolving similar problems in contracts between other companies and the same Union.

From the testimony it appears that discussion of the application of this award began sometime in November, followed by a written proposal of the Company on December 14, 1946 and continued in a somewhat perfunctory manner until negotiations began on the basic contract sometime in January 1947. The basic agreement was finally negotiated and made effective May 7, 1947 with certain changes made in Article 3, Section 3 incorporated in the May 7, 1947 Agreement as Article 5, Section 4. This section was later copied and made a part of the Inequity Agreement dated June 30, 1947 and identified in Appendix 4 of that Agreement as Article 5, Section 4.

The grievance submitted to arbitration in this case and identified as Grievance 5-C-6 was filed by the Union on January 2, 1948 involving #2 Open Hearth. Basically, as the discussion of the contentions of the parties will show, the question in this case is whether the proposal of the Company dated December 14, 1946 and the following negotiations terminating in Article 5, Section 4 of the May 7, 1947 Agreement satisfy the conditions of the award made by the undersigned on October 24, 1946.

CONTENTIONS OF THE PARTIES

In the Grievance No. 5-C-6 the Union maintains that the Company violated terms of the Labor Agreement of April 30, 1945 and the award made under this Agreement and dated October 24, 1946 since the matter of the award has not been satisfactorily adjusted. The Union further maintains that the standard base rate for each job class in question as provided under the terms of the Inequity Agreement must be the applicable hourly rate for all hours not compensated for under the straight tonnage rate. They ask that retroactivity on the application of the standard base rate for these jobs be paid for "a reasonable period following the arbitrator's decision."

Basically the Union contends that its requests are justified on the following grounds:

1. The Company failed to bargain in accordance with the award of October 24, 1946;

2. The grievance of January 2, 1948, No. 5-C-6 is arbitrable as an "unsettled" grievance under Article 14, Section 4 of the May 7, 1947 Agreement and Section 7-3b of the Wage Rate Inequity Agreement;

3. The Union also contends that the standard base rate is to be paid on the job in question under Section 7-3b of the Inequity Agreement;

4. It is further maintained that limitation of any increase in direct labor costs in the application of the standard base rates to the jobs in question must be regarded as having been waived under Article 4, Section 3 (2) of the 1945 Agreement and Section 5-1 of the Inequity Agreement. Current tonnage rates the Union maintains are protected under Section 6-1 of the Inequity Agreement.

The Company maintains that the Union grievance of January 2, 1948 numbered 5-B-6 must be denied in its entirety. This position of the Company is argued on the following grounds:

1. The facts of the Company proposal of December 14, 1946 and the subsequent negotiations terminating in the Agreement dated May 7, 1947 shows that the award of the arbitrator was fully bargained out and hence satisfied;

2. In the full light of the arbitrator's award on Grievance 5-B-13 and according to the recommendations of the arbitrator, Article 3, Section 3 of the 1945 Agreement was amended in the negotiations of the May 7, 1947 Agreement to except occupations where earnings were based on a tonnage rate. This, the Company contends is clearly provided for in the language added to the original Article 3, Section 3 and later changed in the May 7, 1947 Agreement to Article 5, Section 4 to provide, "where such earnings are computed on a daily basis". This quoted portion the Company contends makes Article 5, Section 4 applicable only to occupations where earnings are computed on a daily basis thus excepting jobs covered by the instant grievance;

3. It is further maintained by the Company that the Wage Inequity Agreement is not applicable since the matter is fully covered in the basic Agreement;

4. Finally the Company points out that the instant grievance is not arbitrable under Article 14, Section 4 since it refers to an award rendered on a grievance fully bargained out at the time the May 7, 1947 Agreement was made effective

FINDINGS

The grievance must be denied under the facts of the negotiations beginning November 1946 and terminating in the Agreement of May 7, 1947. No grounds are found for considering the instant grievance under any portion of the May 7, 1947 Agreement or under the Inequity Agreement.

In considering the facts of the negotiations it is necessary to refer back to the decision of the undersigned in Grievance 5-B-13. In his award the arbitrator 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."

As an aid to the parties in negotiating a settlement of this matter under the peculiar conditions set forthein Article 3, Section 3 of the 1945 Agreement the arbitrator made certain recommendations, pointing out that such recommendations had no binding effect on either of the parties. Neither were they prejudicial to the position held by either of them with regard to any position they might consider within the limits of the award. In this recommendation the attention of the parties was directed to the conditions of Article 3, Section 3 within which a settlement would have to be negotiated. These conditions were:

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."

Within these particular limitations as imposed by the 1945 Agreement the arbitrator suggested that a basis of settlement of the issue might well be found in a decision involving the same Union and another company or in contracts between the same Union and several other steel companies. This information was made available to the arbitrator in

briefs supplied by the Company hence was also available by exchange with the Union. A particular point that he called attention to in the awards of the other arbitrators as well as in the agreements was that the provisions of Article 3, Section 3 did not apply to jobs where earnings had previously not been computed on a daily basis.

In the application of the award, therefore, the parties had before them the problem of negotiating compliance within the specific limits of Article 3, Section 3. All efforts by the parties in complying with the award dated October 24, 1946 in Case No. 5-B-13 must therefore be considered within these specific limitations.

The proposal offered by the Company on December 14, 1946 appears to have satisfied these conditions. Reference to this proposal shows that it offered minimum daily guaranteed earnings of $9.04 per turn. Second this minimum guarantee did not result in a substantial increase in direct wage costs, neither did it result in any reduction in pay for a given quantity and type of work. In fact, based upon the earnings of both the small and large furnaces for the pay periods beginning October 1 and ending November 30 the proposal offered in some cases a very small increase in the average earnings per turn.

Without going into all of the merits of the Company proposal it does appear to satisfy the conditions of the award of October 24, 1946. Obviously there are points of detail in this proposal that the arbitrator is unable to pass upon since they would require more information on the problem of compensation than is available. But generally speaking the proposal of the Company is well within the expectancy set forth by the limitations imposed by the provisions of Article 3, Section 3 of the 1945 Agreement.

Over against this the evidence is clear in showing that the Union proposal appears not only impractical, but also seeks a material increase in the guaranteed hourly rate without change in tonnage rates. Attached to the Union reply to the arbitrator's request dated March 8, 1949 the Union has proposed a rate of $2.18½ per hour "for all hours in excess of 1 within 8 hours turn not paid for on tonnage basis," the present tonnage rate per hundred tons to be held intact. Examination of the elaborate chart prepared by the local Union shows that even though the peak earnings might not be increased, the leveling effect of the Union proposal would tend to materially increase earnings and direct wage costs. Under the award in grievance 5-B-13 this proposal is obviously barred by the specific provisions of Article 3, Section 3 of the 1945 Agreement.

The Union proposal is also not practical and would create inequities. Examination of the chart identified as

Company Exhibit 1-A shows that First Helpers employed as "floaters" would benefit under the Union proposal while the older and regularly employed First Helpers would be at something of a disadvantage. Obviously such a wage payment plan would work hardship upon the regular First Helpers resulting in dissatisfaction and discontent. Thus it is clear that the counter proposal offered by the Union was not only impractical but also beyond the scope of the award in Grievance 5-B-13 and the provisions of Article, Section 3 of the 1945 Agreement. On this point it is significant to note the testimony of local Union President Powell. At the time of the hearing in the instant grievance Mr. Powell stated with reference to the Union negotiations that, "The fact that we asked for a substantial wage increase or set our goal for a substantial wage increase certainly doesn't relieve the Company of the fact that they have to bargain the issue out." Certainly this position cannot be defended in the light of the award made on October 24, 1946 and the clear provisions of Article 3, Section 3 of the 1945 Agreement.

While it is clear that the facts must support the Company position that it did bargain under the original award in Grievance 5-b-13 the conclusion of such bargaining is clearly shown by the language added to the original statement of Article 3, Section 3 as it appeared in the 1945 Agreement. In this agreement the provision applied without qualification, "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 overtime 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."

In the 1947 Agreement the above quoted language was adopted without change except to add, "the amount earned on that day by him as a result of the application of incentive wage payment plans <u>where such earnings are computed on a daily basis.</u> (My underscoring for emphasis.)

The Union pleads that this language was added to what became Article 5, Section 4 of the May 7, 1947 Agreement without knowledge by the Union of its effect upon the Arbitrator's award in Grievance 5-B-13. Actually the evidence would indicate that both parties must have had some knowledge of the effect of this change. This is supported by the fact that the change in language appears to have been adopted from the recommendation of the arbitrator in his decision of Grievance 5-B-13. In the recommendation the parties were urged to consider the award and contract provisions in other cases. This material

available to the Union suggested the addition of just such language as underscored in the quotation above. (Section 3, Sub-section D of 1942 and 1945 contract, Carnegie-Illinois Steel Corporation; Section 3, Sub-section d of 1942 contract, Republic Steel Corporation). In this connection the language appearing in the Republic Steel Corporation Agreement is substantially the same as that adopted by the parties in the May 7, 1947 Agreement and reads, "where such rates are computed on a daily basis". From this it must be clear that the Union had available to it as well as very much in mind the problem finally resolved in the negotiations of the 1947 Agreement by the addition of the words, "where such earnings are computed on a daily basis".

In addition this language has appeared in one of the first drafts of the May 7, 1947 Agreement as well as in the final draft. Again the Union had ample opportunity to examine the language finally adopted.

Finally it must be pointed out that the fact that the instant Grievance 5-C-6 was not filed until January 2, 1948, more than seven months therefore elapsed between the signing of the Agreement and the grievance, a period of time permitting a full appreciation of the application and administration of the change negotiated in the 1947 Agreement with reference to the computation of pay on the Open Hearth.

These facts make it difficult to sustain the Union plea that it did not know nor fully understand the import of the change made in the language of Article 5, Section 4 as compared with the language used in Article 3, Section 3 of the 1945 Agreement. It must therefore be held that this language is controlling in the final settlement of the award in Grievance 5-C-6.

With Article 5, Section 4 of the 1947 Agreement controlling no merit is found in the further Union contentions based upon Article 14, Section 4 and references to various portions of the Inequity Agreement.

Article 14, Section 4 applies only to "pending grievances". As pointed out previously the facts shown that the application of the award dated October 24, 1946 in Grievance 5-B-13 was effectively negotiated by the inclusion of the additional language in Article 5, Section 4. For this reason Grievance 5-C-6 has no merit since it was based upon a grievance previously settled in the negotiation of the 1947 Agreement.

Neither is merit found in the Union contention based upon various provisions of Section 7 of the Inequity Agreement. Under Section 10, Article 5 of the May 7, 1947 Agreement is made a part of the Inequity Agreement and identified as appendix 4. This the basic agreement and the Inequity Agreement are both entirely consistent with each other on the point in dispute.

The request of the Union that the job rate set up under the Inequity Agreement be made applicable, retroactively, to the jobs in question must also fail. Under the language of Article 5, Section 4 of the 1947 Agreement, the question of the job involved in Grievance 5-C-6 is specifically excepted. Accordingly these two further claims must also be denied.

AWARD

In view of all the facts and arguments offered by the parties, both orally and in writing, the Grievance known as 5-C-6 filed by the Union on January 2, 1948 must be denied on the following grounds:

1. The facts show that the Company proposal of December 14, 1946 was generally within the limitations of the award dated October 24, 1946 in Grievance 5-B-13. On the other hand the facts show that the Union counter proposal was impractical since it created inequities and was also beyond the limits of the award in Grievance 5-B-13 and the specific provisions of Article 3, Section 3 of the 1945 Agreement.

2. The facts also show that the language added to Article 3, Section 3 of the 1945 Agreement which came to be known as Article 5, Section 4 in the 1947 Agreement is clear in excepting from the application of Section 4 occupations where earnings are computed on other than a daily basis. With the addition of this language a complete settlement of the award in Grievance 5-B-13 was effected. Hence Article 5, Section 4 of the May 7, 1947 Agreement is controlling.

3. Since Article 5, Section 4 of the May 7, 1947 Agreement is controlling no merit is found in the Union contentions based upon Article 14, Section 4 and various provisions of Section 7 of the Inequity Agreement.

The Union grievance in its entirety is therefore denied.

(signed) JACOB J. BLAIR
Jacob J. Blair

Dated in Pittsburgh, Pennsylvania, June 22, 1949.