arb. no 41

IN THE MATTER OF ARBITRATION Between INLAND STEEL COMPANY Indiana Harbor Plant a n d UNITED STEELWORKERS OF AMERICA, LOCAL 1010, CIO	)	ARBITRATION AWARD Case No. 10-C-4

PETER M. KELLIHER
Arbitrator

APPEARANCES:

FOR THE COMPANY
John Kokich,
Assistant to Superintendent of Labor Relations
Herbert Lieberum
Assistant to Superintendent of Labor Relations
Richard Royal
Frank Kelly,
General Foreman

FOR THE UNION
Harry Powell
President
O H McKinsey,
Grievance Committee Chairman
August Sladcik

STATEMENT

The parties were unable to satisfactorily adjust a certain grievance and accordingly determined upon arbitration as a means of final settlement. On April 8, 1950, the parties jointly designated PETER M. KELLIHER to serve as a sole arbitrator.

Pursuant to proper notice a hearing was held in EAST CHICAGO, INDIANA, on May 8, 1950. At this hearing the parties were afforded full opportunity to present oral and written evidence, to examine and cross-examine wittnesses, and to make such arguments as they deemed pertinent. A full transcript of

the proceedings was taken.

THE ISSUE

Prior to the arbitration hearing duly authorized representatives of the parties stipulated that the following would be the issue to be arbitrated:

> "The question to be decided in the subject case is whether or not the Company was in violation of Article VII, Section 9, of the Collective Bargaining Agreement when it scheduled the aggrieved employees for three days of work in the work week of November 24 - November 30, 1947."

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union contends that the Company has violated Article VII, Section 9 of the contract in scheduling the six aggrieved employees for only three days of work in the work week of November 24 - November 30, 1947. The Union would construe the introductory sentence of Article VII, Section 9 as defining "decreased business activity" as meaning decreased operations.

It is the Union's position that the term "lay off" is applicable to this case because the aggrieved employees were not permitted to work on the days in question. It would then follow that this was a lay off because of "decreased business activity" and the Company should have followed the procedure outlined in Paragraph A of Section 9. This would not necessarily have meant that the work would be divided equally between those employees who were demoted from the motor inspector and motor room tender classifications in the Twenty-Four Inch Bar Mill to the motor inspector helpers and those employees who were already in the helper's pool.

The Union contended that some of the senior employees may have received five days' work during that week. The Union also contended that the schedule

could have been developed in a manner that some of the older Twenty-Four Inch Bar Mill men would not have to be demoted. It is the Union's contention that the Company should have properly worked this out in the schedule as originally posted. Instead, the Company scheduled the motor inspector and motor room tenders of the Twenty-Four Inch Bar Mill for only three days' work during this week.

The Company did not offer to change the schedule until after the dead line was passed. The Union would not accept the Company's proposal that the helper work be divided equally because that would not be in accordance with the Union's interpretation of Article VII, Section 9. The motor inspector helpers rightfully refused to divide the work because they had been scheduled for those six days of work during that week which would havemeant that they would be surrendering their premium payments for the week and the schedule would be changed after the dead line had passed.

The Union denies that it in any way requested the Company to create work for the employees in the Twenty-Four Inch Bar Mill.

COMPANY'S POSITION

The Company states that this was an unusual problem of scheduling because of the short work week due to the holiday. Most of the three-hundred operating employees worked only three days that week and a difficult problem of scheduling was encountered by the Company. The Company contends that under Article VI, Section 5, it is the Company's responsibility to determine the daily and weekly work schedules and the schedules may be changed by the Company from time to time.

The Company denies that the factual situation presented during the work week, November 24 - November 30, 1947, with reference to the six aggrieved employees could be considered a "lay-off" within the meaning of

Article VII, Section 9.

The Company states that when employees are laid off they are removed from the payroll and are required to turn in all Company property, and that a notation is entered in the employee's personnel record that they are laid off. The Company argues that Article VII, Section 9, by its express language, relates only to "crew reductions due to lack of business." The Company cites the unusual business activity that existed both before and after this work week as proof that there was no "lack of business" during this period.

It is the Company's further contention that if the somewhat cumbersome procedure set forth in Paragraph A, Section 9, of Article VII were followed, it would be an undue hardship for the short time involved. Actually in this case, according to the Company, some of the aggrieved employees refused to be demoted to the helper classification and the helpers refused to divide the work. Although the Company was not obligated by contract to attempt and equitable division of the work or to demote motor inspectors and motor room tenders because of the schedule for the work week, it made an attempt to adjust the grievance in a manner it believed should satisfy the Union. The schedule was posted on November 20, 1047, and there was ample time to work out a change in schedule before the dead line.

DISCUSSION AND DECISION

The parties have cited the following contractual provision as being pertinent to a determination of this issue:

"ARTICLE VI

HOURS OF WORK AND OVERTIME

"Section 1. This Article shall not be construed as a guarantee of hours of work per day or per week, except as provided in Sections 7 and 8 below.

"Section 5. Determination of the daily and weekly work schedule shall be made by the Company and such schedules may be changed by the Company from time to time.

. . . . . .

"ARTICLE VII

Seniority

. . . . . .

"Section 9. Layoffs - Force and Crew reductions Due to Lack of Business. -- When it becomes necessary to lay off employees because of decreased business activity, the following procedure shall be followed, unless otherwise mutually agreed between the Company and the Union:

"A. Sequential Jobs:

(1) Employees within the sequence having no length of service credit (probationary employees) shall be laid off.

(2) The hours of work within a sequence shall be reduced to thirty-two (32) hours per week before anyone with continuous length of service standing in a sequence is displaced therefrom.

(3) Should there be further decrease in force, employees will be laid off according to the seniority status as defined in the following paragraphs of this Section in order to maintain the thirty-two (32) hour week.

Employees will be demoted in the reverse order of the promotional sequence in accordance with factors (a), (b), and (c) defined in Section 1 of this Article. Where factors (b) and (c) are relatively equal, continuous service in the department shall govern. No question may be raised with respect to factor (b), 'Ability to perform the work,' where the employee has held and performed the duties of an occupation for six (6) months or more."

In construing the provisions of the contract as a whole, it is clear that the parties have not expressed the intent that employees be guaranteed a thirty-two hour work week. If a guarantee were intended, such a guarantee would reasonable have been placed in Article VI, entitled "Hours of Work

and Overtime." Section 1 of Article VI, as quoted above, expressly states in the negative that the article shall "not be construed as a guarantee of hours of work per day or per week." The Union does not contend that there is a thirty-two hour work guarantee even if there is no work available in the promotional sequence. (T. 95)

The language used in Section 9 contemplates the possibility that the scheduled work week may be reduced and that crew reductions may be necessary because of a lack of business. The Arbitrator does not have the right to modify or add to or subtract from the language used in the contract. The parties have employed the following words, "Layoffs -- Force and Crew Reductions Due to Lack of Business." The Arbitrator must give to these words their general and accepted meaning -- that is, that Section 9 relates only to layoffs because of a "lack of business," in the sense that customers' demand has decreased. If there was no lack of business and the Company had a back log of orders, the Company's own self interest would prevent layoffs.

The procedure outlined in Paragraph A, Section 9 of Article VII, is applicable only "When it becomes necessary to layoff employees because of decreased business activity, . . ." These employees were not advised and they did not understand that they were being laid off. Several hundred operating employees did not receive more than three day's work that week and there is no evidence that they made any claim based upon a thirty-two hour work guarantee. The contract does not distiguish between permanent layoffs and temporary layoffs and the only criterion and applicability of Section 9 is to layoffs due to lack of business.

The Arbitrator believes that the following statement of the Union's position is significant:

> "He is asking aquestion about what you do on down turns and I think we are both ducking the question.

> In general, if it is a closed end type of situation where the men can see an end, we attempt to muddle through. I don't think the Union maintains its position on a 32-hour week on a closed end type of situation. But this is so much bigger and will be used as an open end type of situation where nobody can see the end to any given occurrence or anything that's happened, and to the general over-all economy, that the mill has to go down and consequently the men are scheduled one or two days a week and a terrific amount of pressure is generated by the older men who maintain they are entitled to 32 hours a week by the contract. This is typical of both the closed end and open end situation. (Emphasis added)

It would appear to the Arbitrator that this situation should properly be characterized in the Union's terms as one of a closed end type. This was a case of a disrupted work schedule and short operations due to the observance of the holiday in this week. Most of the operating employees were scheduled for only three days' work that week. The uncontroverted testimony was that the Repair and Maintenance work must drop in proportion to your production in any mill . . . unless something extra unforeseen that might be planned ahead of time . . . but during that time we had nothing planned . . . . . (T. 101)

In an "open end type of situation where no one can see the end . . . and to the general over-all economy, that the mill has to go down and consequently men are scheduled one or two days a week," clearly due to such a lack of business, layoffs would be made in accordance with Article VII, Section 9.

Because this was not a layoff due to "lack of business", theCompany was under no obligation to follow the procedure outlined in Paragraph A, Section 9 of Article VII. It is agreed that prior to this grievance this was the first instance of this type under this contract so no past practice

at variance with this interpretation existed as of the date of filing the grievance. (T.22 and 51)

It is true that as a means of adjusting the original grievance, the Company sought to demote Twenty-Four Inch Bar Mill employees into the helper pool. TheCompany was not required, as a matter of contract in this case, to so schedule the work. The evidence is conflicting as to whether this change is schedule was proposed before the dead line. The Company testimoney is that it would have been willing to pay the premium to the helpers who were originally scheduled to work six days.

The Union denies that the Company was willing to do this at the time theprpposal was made. In any event, the claim under Article VI, Section 3 (c) could have been presented as a grievance on behalf of the motor inspector helpers. It must be stated, however, that the only question before this Arbitrator is the alleged violation of Article VII, Section 9, and the Arbitrator, from the clear language of the contract must find that that provision was not violated in scheduling the aggrieved employees for three days of work in the work week of November 24 - November 30, 1947.

AWARD

The Company did not violate Article VII, Section 9 of the Collective Bargaining Agreement when it scheduled the aggrieved employees for three days of work in the work week of November 24, - November 30, 1947.

Peter M Kelliher
Arbitrator

Dated at Chicago, Illinois
this 19th day of June, 1950.