IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY
(East Chicago, Indiana)

-and-

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION No. 1010

* *

ARBITRATION AWARD AND OPINION

This case involves a question of the Company's liability to E. C. Johnson for call-in pay. Pursuant to their collective agreement, the parties designated the undersigned as arbitrator of this dispute and a hearing was held thereon at the Company's plant in East Chicago, Indiana on August 4, 1950. Present and participating in the hearing were:

For the Union

Joseph B. Jenneske	International Representative
Don Lutes	Chairman, Grievance Committee
August Sladick	Committeeman
E. C. Johnson	Grievant
O. Satterblom	Witness

For the Company

William A. Blake	Superintendent, Labor Relations
H. C. Lieberum	Divisional Supervisor, Labor Relations
Richard Royal	Divisional Supervisor, Labor Relations
R. J. Beesley	Assistant Superintendent, Electrical Dept.

FACTUAL BACKGROUND

The grievance herein arises from the circumstances surrounding the threatened nation-wide steel strike (over the pension question) which was first scheduled to commence at midnight July 15, 1949. Two days earlier, on July 13, 1949, the Company received the following telegram from Hon. Cyrus Ching, Director of Federal Mediation and Conciliation Service:

> "I am informed that negotiations between your Company and the United Steelworkers of America C.I.O. regarding certain issues currently under dispute have been terminated. I am also informed that the Union has telegraphed its acceptance of the procedure of the President in his wire of July 12. The Union has stated that it will continue work under the terms of the existing bargaining agreement for a period of sixty days from July 16 with respect to those companies who likewise accepted the President's request.
>
> The President's wire, as you know, stated that in view of the circumstances set forth therein: "I am requesting the parties to continue work and operations under the terms of the collective bargaining agreements now in effect for a period of sixty days from July 16, 1949. I am

appointing a board consisting of three public members to investigate the issues in dispute and to report to me thereon in forty-five days from July 16 with their recommendations as to fair and equitable terms of settlement."

Upon instructions of the President and in view of the circumstances set forth above, I am requesting that you accept the procedure of the President and that you inform me in order that the proceedings may be a part of the permanent record.

It is understood, of course, that you will not be requested to be bound in advance by any recommendations which the board might make between the disputing parties but out of which we hope will come a settlement. Signed by Cyrus Ching."

to which the following reply was wired by Mr. Clarence B. Randall, President of the Company:

"Dated July 13, 1949

Honorable Cyrus Ching,
Director, U. S. Mediation and Conciliation Service
Washington, D. C.

We have received your telegram of July 13 advising us that the steelworkers CIO have terminated negotiations with us. Inland Steel Company is willing to continue its operations under its existing contract for the period of sixty days from July 16 upon assurance from the steelworkers that there will be no strikes during that period.

With reference to the board which the President proposes to appoint, we cannot commit ourselves to be bound by its procedures or findings until he has made the appointments and made clear the basis of its authority, as we cannot obligate our company to take part in any procedures which do not comply with existing state and federal laws.

Clarence B. Randall
President
Inland Steel Company"

On the same day, certain representatives of the local Union, in reliance upon the exchange of the above telegrams, declared in writing that the existing collective bargaining contract was extended for 60 days but this action was later repudiated because it was taken without authority of the International Union - and because it was intended to be "contingent upon the terms and conditions of the Inland Steel Company's full acceptance of the President's recommendations." In these circumstances and, anticipating that the strike would occur at midnight July 15th, as scheduled, the Company immediately embarked upon a "strike shutdown schedule" designed to effect a complete shutdown of operations in advance of the strike deadline.

The "strike shutdown schedule" called for the shutdown of the 24" Bar Mill, where the grievant E. C. Johnson was employed as a motor tender, at 8:00 A.M. on Friday, July 15th. Previously, the 24" Bar Mill had been scheduled to work through to the end of the week with Johnson being scheduled to work on the 8-4 turn on Monday and Tuesday (July 11th and 12th), off on Wednesday and Thursday (July 13th and 14th) and work on the 4-12 turn on Friday and Saturday (July 15th and 16th) of that week. Incident to the shutdown of operations, however, the Company on July 14th posted a notice advising employees that "due to circumstances beyond our control the 24" Bar Mill will go down at 8:00 A.M. Friday, July 15, 1949". In the meantime, Johnson, who had not seen the posted notice (because he was scheduled off on July 14th) reported for work on the 4-8 turn Friday, July 15th. When he thus reported, his foreman informed him that the 24" Bar Mill had been shut down earlier in the day and there was no work available for him. Johnson thereupon demanded call-in pay due to the Company's failure to give him two hours notice not to report for work but this was denied, the foreman claiming that the Company was not contractually obligated to pay call-in pay under the existing circumstances.

On July 15, 1949, after most of its operations, including the 24" Bar Mill had been shut down, the Company notified the Director of the Federal Mediation and Conciliation Service that in agreement with other large producers in the steel industry it had reconsidered its position "and will appear before the (Fact-finding) Board". As a consequence, it was informed by the Union at 2:07 P.M. the same day that its employees "will continue to work under the terms of the collective bargaining agreement now in effect for a period of 60 days from July 16, 1949 ending 12:01 A.M. September 14, 1949 and your collective bargaining agreement shall be deemed to be extended for said period under the terms and provisions stipulated by the President of the United States."

PERTINENT CONTRACT PROVISIONS:

Article VI, Section 7 of the Collective bargaining agreement provides:

> Section 7. Whenever an employee has been scheduled or notified to report for work and upon his arrival at the plant finds no work available in the occupation for which he was scheduled or notified to report, unless the Company has notified him at the place he has designated for that purpose not less than two (2) hours before his scheduled starting time, he shall be paid for four (4) hours at his

pay period average straight time earnings rate on the occupation for which he was scheduled or notified to report. If he is offered other work for which he is physically fit, for four (4) hours or more with earnings for the same effort at least equal to his pay period average straight time earnings on the occupation for which he was scheduled or notified to report and he refuses such work, he shall not be eligible to receive the four (4) hours' reporting pay above provided for.

It shall be the duty of the employee to keep the Company advised of a reliable means of prompt communication with him.

The purpose of this Section is to compensate employees for faulty scheduling and it shall not apply if the failure to supply work to an employee is due to the employee, or to a strike, stoppage of work in connection with a labor dispute, power or equipment failure, acts of God or other interferences with Company operations beyond the control of the Company.

CONTENTIONS OF THE PARTIES

The Union contends that E. C. Johnson is entitled to four hours reporting pay, under Article VI, Section 7 of the collective bargaining agreement, because he reported for work as scheduled on July 15, 1949, without being notified by the Company two hours in advance of his scheduled starting time (4:00 P.M.) that there will be no work for him to perform. Its position is that the contract exempts the Company from liability for reporting pay only when its failure to give the required notice to an employee is due to an existing strike, work stoppage, power or equipment failure, acts of God or other interferences beyond the Company's control and it claims that none of these causes existed on July 15th which were beyond the Company's control. In support of this contention, the Union argues that (1) no strike actually occurred on July 15th, (2) no "work stoppage" existed on that day because the term "work stoppage" means a "wildcat" or "unauthorized or illegal strike" and no such event occurred, (3) there was no "power or equipment failure" and no "act of God" intervened, (4) and there was no interference with operations which were beyond the control of the Company because the Company should have acceded to the President's request two days ahead of time and there . . . . would not have been the situation develop which developed in this case" (Tr. p. 61). Further, the Union contends that notice of shutdown of the 24" Bar Mill posted on July 14th "applied only to the production employees and the electrical employees (including Johnson who was a motor tender) have always been told to report for work in spite of posted notices unless

personally notified otherwise, because the nature of the work of the electrical department is such that they are required to take care of equipment and get it into shape for situations of the type that developed on July 15, 1949" and "as it actually happened, the electrical department came out as scheduled as per previous instruction and other employees were allowed to work, although the aggrieved was sent home. This makes it clear in the eyes of the Union that the notice posted was not intended for the electrical department".

The Company denies that it is liable for reporting pay to E. C. Johnson under the facts and circumstances of this case. It insists that due to the impending strike which was scheduled to commence at midnight on July 15th, it became necessary to shut down not only the 24" Bar Mill where Johnson worked but all other operations as well and that this shutdown constituted an interference with operations which was beyond its control. The Company acknowledges that some electrical department employees, including motor inspectors, were permitted to work during the shutdown because their work is "not of a nature of a clean up and preparations for the start up and they could do work of a repair nature that would be complete and would be ready for the start up and would not have to be gone over again" (Tr. p. 23) but that there was no work for Johnson because he was scheduled to work that day as a motor tender and "a motor tender attends the main drive of the mill" when it is in operation and "whenever the mill ceases to operate, the motor room is shut down, there is no work there, with the exception of some cleaning up work during the shutdown, such as blowing dust off the motors. That is usually a limited period and taken care of immediately before the start up. If it was done immediately on the shutdown the chances are, if it were a long shutdown, it may have to be done again before you start up. In this particular instance the shutdown was to be that night at midnight. At four o'clock in the afternoon, less than two hours after the contract had been extended, there was no opportunity to reorganize for a start up. When E. C. Johnson reported for work the mill was idle. There was nothing for him to do. (Tr. p. 28) Further, the Company contends that in view of the fact that Johnson had not seen the posted notice of shutdown of the 24" Bar Mill and though there was no contractual

obligation to notify him not to report for work, the electrical supervision nevertheless attempted to notify him by phone not to report but the attempt was abandoned when no answer was received.

OPINION

The Arbitrator has carefully reviewed the transcript of testimony and other evidence in this case and finds that he simply cannot sustain Mr. Johnson's claim. Undoubtedly, the purpose and intent of a call-in or reporting pay clause in a labor contract is to create a liability upon management for the consequences of its improper and inefficient work scheduling by compelling the payment of regular wages, over a minimum number of hours, to employees who, without having received prior notification not to report for work, expend their time and money traveling to work when there is no work for them to perform. Frequently, of course, these clauses are so qualified as not to require any payment in certain situations such as emergencies, strikes, breakdowns, or other specified circumstances or in unspecified circumstances which are beyond the control of management. In this respect, however, it is important to distinguish between two distinct types of call-in pay clauses: (1) one which compels payment of reporting pay to employees who come to work without having been properly notified that there will be no work and provides that "this provision shall not apply in cases of fire, storm, strikes, or in other circumstances beyond the control of the Company" and (2) one which compels payment of reporting pay upon failure of management to notify employees in advance that there will be no work and provides that "this provision shall not apply if the failure to supply work to an employee is due to fire, storm, strikes or other conditions beyond control of the Company". For the intent of the parties under the first type of clause is clearly to relieve the employer from liability if the <u>failure to notify the employee</u> was due to the specified causes or to causes which were beyond management's control, while the intent of the second clause is just as clearly to relieve the employer from liability--not because it was prevented from giving the required notice by any of the specified causes or by uncontrollable conditions--but only if <u>the failure to supply work to an employee</u> is due to any of the stated reasons or to conditions beyond management's control. In other words, under the first type of clause, even if the lack of work is due to a

condition beyond management's control, the employer is still not relieved from liability for failing to notify the employees not to report unless it was prevented from so notifying them by any of the specified conditions or by conditions beyond its control; whereas, under the second type of clause, if the failure to supply work was caused by any of the specified conditions or by conditions beyond Management's control, the employer is relieved from liability for reporting pay regardless of whether or why it was prevented from notifying the employees not to report for work.

Article VI, Section 7 of the instant contract is clearly of the type which imposes an absolute liability upon Management to compensate employees for a failure to give them advance notice not to report for work in all cases where they do report for work and find that none is available, except where failure to supply work is due to any of the circumstances prescribed therein. This makes both the Company's claim that it attempted, but unsuccessfully, to notify Johnson by telephone not to report for work and the Union's claim that the posted notice of shutdown in the 24" Bar did not apply to the electrical department (of which Johnson is a member) wholly irrelevant to the issue in this case. For if Article VI, Section 7 does not relieve the Company from liability by reason of the fact that the failure to supply Johnson with work was due to an interference with operations beyond its control then the Company is obligated to him for call-in pay in any event, since the contract requires actual notice to be given employees not to report for work and he admittedly received no notice. The sole issue in this case, then, is—was the failure to supply Johnson with work on July 15, 1949 "due to the employee, or to a strike, stoppage of work in connection with a labor dispute, power or equipment failure, acts of God, or other interferences beyond the control of the Company?"

A most careful appraisal of the facts and circumstances of this case leads the Arbitrator to the inescapable conclusion that while no strike or other work stoppage on the part of the employees occurred on July 15, 1949 so as to prevent the Company from continuing with production, there was, indeed, an interference with its operations which was beyond its control and which accounted for its failure to supply Johnson with work on that day. I have come to this conclusion principally because I am convinced by the evidence that it would be impractical and well nigh impossible for a

steel plant to continue with all its essential operations up to the very last minute when an industry wide strike is scheduled to commence. For as the Company convincingly points out, in a steel plant, due to the interlocking operations it is essential, in order to achieve an orderly and efficient shutdown, that the closing down of certain operations be commenced well in advance of the strike deadline. For instance, shutting down the blast furnaces is considered a long and dangerous procedure which must be started ahead of the actual cessation of operations. And, when the furnaces and coke plants are shut off, the boilers and other equipment in the power house must be taken off on account of the lack of gas and, as the power becomes limited, other operations must go down in turn. Under these circumstances, the commencement of the shutting down procedures on July 14th, just one day before the announced strike deadline, was surely not an arbitrary action and one which must fairly be interpreted as creating "an interference with Company operations beyond the control of the Company".

In arriving at the above conclusion, I am not unmindful of the Union's argument that this "interference with the Company's operations" could not have been beyond its control "because all they had to do was to accede to the President's request two days ahead of time and there would not have been any damage, there would not have been the situation develop which developed in this case". However, I cannot agree with this position. Indeed, the problem here is not whether the interference with operations would have been uncontrollable if the Company had unqualifiedly accepted the President's proposal but whether it was uncontrollable in the circumstances of the Company's earlier decision not to commit itself to be bound by the Fact-Finding Board procedures until certain steps were taken and in the circumstances of the Union's declaration that the Company's qualified answer made it necessary for the strike to be called, as scheduled. For while reasonable persons might well disagree on whether the Company should or should not have chosen to participate before the Fact-Finding Board earlier than it did, I think it is no answer to say that its unwillingness to do so on July 13th deprived the shutting down procedures taken on July 14th and 15th in preparation for the strike (which the Company had every reason to believe would be called at midnight on July 15th) of the essential elements of an

uncontrollable interference with its operations.

Nor do I think it a valid argument that Johnson should have been provided with work on July 15th just because other members of the electrical department were permitted to work. The evidence shows that Johnson was scheduled to work as a motor tender in the 24" Bar Mill on July 15th and there was no such work for him because the mill was not operating and the Company decided against having repair or other work performed on that particular turn. Under Article IV of the parties' contract, this was a valid exercise of the Company's right of "management of the plants and the direction of the working forces, including the right to plan and control plant operations".

Under all the facts and circumstances of this case, the Arbitrator is constrained to hold that, under Article VI, Section 7 of the collective bargaining agreement the Company is not liable for call in pay to E. C. Johnson for failing to notify him not to report for work on July 15, 1949.

AWARD

The grievance of E. C. Johnson (#10-C-9) is hereby disallowed.

Harry H. Platt, Arbitrator

August 29, 1950