IN THE MATTER OF ARBITRATION BETWEEN:

Inland Steel Company, Indiana Harbor Works, East Chicago, Indiana, and United Steel Workers of America, C. I. O. - Local 1010.	Arbitration No. 71 Grievance No. 7-D-5 DECISION AND AWARD APR 8 1953

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Hearing at Office of Company, East Chicago, Indiana,
March 27, 1953

ARBITRATOR: Dr. Clarence M. Updegraff,
102 Law Building,
Iowa City, Iowa.
(Selected by mutual agreement of parties).

APPEARANCES:

FOR THE COMPANY:

H. C. Lieberum, Superintendent, Labor Relations,
W. L. Ryan, Assistant Superintendent, Labor Relations,
R. J. Stanton, Divisional Supervisor, Labor Relations,
L. R. Mitchell, Divisional Supervisor, Labor Relations,
O. J. Holmgren, General Foreman, Plant 2 Mills, Electric.

FOR THE UNION:

Joseph B. Jeneske, International Representative,
Peter Colacci, Chairman, Grievance Committee,
Casimir P. Krivickas, Departmental Grievance Representative.

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All agreed steps preliminary to arbitration, as contracted by the parties having been observed, waived, or modified by mutual agreement, a hearing was held at the office of the company in East Chicago, Indiana, on March 27, 1953, at which written and oral evidence and arguments were received and heard. In accordance with the agreement of the parties, no post-hearing briefs were filed.

THE ISSUE

The union claims that the company violated the terms of Article VI, section 4 of the labor agreement between the parties by failure and refusal to pay holiday pay to Rudy Yuran for New Year's Day, January 1, 1953.

The company asserts that Rudy Yuran did not qualify for the holiday pay because he failed to work "as scheduled or assigned both on his last scheduled work day prior to and his first scheduled work day following the day on which the holiday" was observed, and that he did not fail to so work because of sickness or death in his immediate family "or similar good cause." (Transcript pp. 12 - 13).

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The Company's Position:

It appears that about 9:30 A. M. on December 25, 1952, Rudy Yuran was found sleeping in the number two blooming mill motor inspection shanty. For this he was advised that he was to be disciplined by being required to take a suspension of "two working days." Wednesday, December 31, and Saturday, January 3, were designated as the days of suspension.

The "discipline statement" delivered under date of December 26, 1952, reads in parts as follows:

> "At 9:30 A. M. on December 25, 1952 you were found asleep in the number two blooming mill motor inspector shanty. You were awakened and told to resume your duties as a motor inspector leader.

"You have been warned several times by your foreman in regards to sleeping on the job.

"DISCIPLINE:

"Two (2) working days off, Wednesday, December 31, 1952 and Saturday, January 3, 1953.

"Continued violation may result in further disciplinary action.

"This is being made a part of your personnel record."

* *

Because of the above stated disciplinary action the company points out that Rudy Yuran did not work as he had been scheduled the last work day prior to January 1st and his first work day thereafter, as required by the agreement to qualify for vacation pay. The employer therefore contends that Rudy Yuran did not meet the requirements to become entitled to holiday pay for January 1, 1953 and hence he was correctly denied the same.

The Union's Position:

The union recognizes that Yuran did not work on the last day during which he had been scheduled to work prior to January 1st, nor on his first regular work day thereafter, but it contends that Yuran failed to work on such days because of "similar good cause" as stated in the contract. It offers as an alternative argument that when a man has been disciplined by being suspended or being required to take time off, he is "scheduled off" and that to the extent of the time affected by the disciplinary suspension his schedule is effectually changed. (See Transcript pp. 4, 6 - 7).

General Analysis:

Holiday pay is granted to enable the working man to enjoy important holidays without consequent losses of income which to many working people whose day to day earnings may very little if any exceed their day to day needs, would make the holiday a hardship rather than a privilege. (See Transcript p. 7). Many employers object to granting holiday pay for unworked holidays because of the tendancy of numerous people to "stretch" the holiday into an absence from work for two or three or more days. Hence, the compromise has been rather widely established that the employer grants the holiday pay subject to the condition that to become eligible for it, the worker must be present at work on the last scheduled work day prior to and the first such day after the holiday. The purpose of this rule governing qualification is obvious. It is to discourage the employee on his volition from being absent the day before or the day after a holiday or both.

It will be noted that on basic principle the qualification rule would not be applicable here since Rudy Yuran was not absent from the plant the last work day before or the first work day after January 1, 1953 of his own volition. In fact, on the days in question he would have been acting improperly had he appeared at the plant and attempted to punch in and go to work in the usual time, place and manner. Had he tried to do so, he would probably have been told he was "not scheduled to work." In the company's written "statement" given to the arbitrator at the hearing it is said (see Transcript p. 12), "the grievant had he not been disciplined would have been scheduled for work on December 29, 30 and 31, 1952 and January 3 and 4, 1953." It goes on to say that he

was disciplined "with the loss of two working days," i. e., December 31, 1952 and January 3, 1953. Thus it indicates the man's schedule was changed and that he was "not scheduled" or was "scheduled off" on those last two mentioned days. If so, he worked the last day he was scheduled to work prior to the vacation and the first day he was scheduled to work thereafter.

A contention made by representatives of the company at the hearing was that it was the intention of management to penalize Yuran by the amount of three days loss of pay as a disciplinary action. (See Transcript p. 12). This was to be handled by announcing two days off and scheduling those days as the day before and the day after a holiday. Unfortunately for this contention the disciplinary action specifically reads, "Two (2) working days off....." The company could have just as readily have expressly stated that it intended the worker (Yuran) be suspended or lose pay for "three (3) days off." If that was its intention, it would have been well to have so stated. In such case, apparently, there would have been no question as to the amount of loss of pay. The union would have been free in such case and at that time to file a grievance contending that the punishment was unjustly severe if it felt called upon to do so. (See Transcript pp. 24 - 25).

The company has proven that it is its practice to impose disciplinary suspensions so that the days will run consecutively with the disciplined person's regular off days. (See Company's Exhibit 2). However, that does not necessarily establish the propriety of refusing the holiday pay in any such case unless such action is clearly included in and announced as a part of the disciplinary penalty.

Moreover, Article VI, section 4 contains a clause entitling the worker to his holiday pay even though he has not worked the day before or the day after the holiday if he has failed to do so "because of sickness or death in the immediate family, or similar good cause." It would appear to be not only a "similar good cause" (or a cause similarly as good) but probably the most valid cause or reason possible for failing to appear at work when one has been told not to appear because the employer is subjecting him to suspension on the day or days involved.

The absence of the employee on the days in question, as above observed, did not arise from his desire to "stretch" the vacation period. Such absence was, therefore, not on principle a violation of the labor agreement. Since the absence was, as above suggested, for "good cause" the employee is entitled to have it disregarded and to be paid the agreed holiday pay for January 1, 1953.

THE AWARD

It is awarded that the grievance herein concerned be and the same is sustained and that Rudy Yuran is entitled to be paid holiday pay for January 1, 1953, New Year's Day, based on his hourly pay rate as of that date.

Arbitrator

Iowa City, Iowa

APR 8 1953