Arbitration between

United Steelworkers of America, Local 1010	)	Subject
and	)	Grievance No. 13-D-9
Inland Steel Company	)	award # 77

Statement

This case involves a fairly technical operation -- at least one which is described in technical terms; but for an understanding of the issue, it is not necessary to use all these terms. Indeed, the parties themselves not being agreed about nomenclature of crews or turns, the arbitrator is going to set forth the situation in a manner which is, perhaps, oversimplified but yet adequate.

Black, the grievant, works on one of the three crews in question. These crews have to do with Streine shears; and the situation is complicated by the fact that there are two kinds of Streine shears, #1 of which is considerably heavier than #2. Now the promotional sequence of the crews doing this work is on the basis of hierarchical job classifications -- a ladder, so to speak -- at the top of which is the job of Shearman. But it is a sort of double ladder, in that the #1 and #2 shearmen are bracketed as co-equal classifications; yet the #1 shear job carries a higher rate because it involves heavier work. Accordingly, the next job down on the sequence is also "double-barrelled." That is the job of Piler Inspector; and there is a piler inspector for the #1 Streine shear and another for the #2 Streine shear, the former carrying a better rate than the latter, because it is heavier work, although both jobs are the same as far as promotional sequence is concerned. That is, if an incumbent of #2 shear Piler Inspector job has the greatest seniority (as defined in the contract) he has first crack at an opening in the Shearman classification, for purposes of promotion, even over the incumbents of the #1 shear Piler Inspector jobs.

Now to come back again to Black, the grievant. He is and has been Piler Inspector on #1 shear in, let us say, Crew 3. On this next point the record is a little fuzzy; but the following assumption will be sufficiently accurate to set forth what the issue is and how it arose. Mr. Shaw was a Piler Inspector on the #1 shear of what we will call Crew 1. He died, thus creating an opening. Black wanted to be shifted to the job left vacant by Mr. Shaw's death, which shift would be a lateral transfer not involving any difference in rate or work. The Company would not let Black make this transfer but put a man named Clawson into Shaw's old job. (Perhaps it should be stated briefly that Black was at first allowed to make the lateral shift and held Shaw's old job about a week; but then the Company rescinded this decision and put Black back at his old job, placing Clawson in the job Black wanted.) Apparently Clawson came up from the job classification below -- that of Shear Helper. Of course, Black had seniority over Clawson; and Black, wanting to be on the particular crew that Shaw had been on, thinks that on the basis of his seniority he should have had the choice of crews as against a new man like Clawson. The reason Black gave for wanting that particular spot is that Anderson, the shearman in that crew, is frequently out sick; and if Black were there, he would pinch hit for Anderson during such temporary absences, assignment of these fill-ins of such temporary nature not being governed by seniority but being given to the next in line in the sequence on that particular crew. Black says that he would thus have occasion to earn more money, at Anderson's higher rate, and would also acquire more competency for the promotion to Shearman which might some day open up.

Now, it must be noted that this move would not put Black in any better line for promotion to shearman, as far as his right to such promotion is concerned, since he would have exactly the same chance for promotion to any one of the six Shearman jobs in his present spot. It is interesting in this connection, however, to observe that both Grotkiewicz and Majestic, Piler Inspectors on the #2 Streine shears, have seniority over Black, so that, if a Shearman job fell open, Black

would not be eligible for promotion directly into it unless both Grotkiewicz and Majestic waived the promotion. Indeed, the reason why Black now has the #1 Streine Piling Inspector job is that both Grotkiewicz and Majestic have preferred to stay on the #2 shear, in spite of the lower rate there carried, because they did not want to do the much heavier work on the #1 shear job.

In the grievance filed by Black, it was alleged that the Company had violated Art. VII, Secs. 1, 4(b), 6 and 8 of the contract; and at the hearing the Union also made it evident that since there was a custom and practice of making these lateral shifts, then the Company had also violated Art. XIV, Sec. 6 -- the past practice provision. The Company, on the other hand, asserts that nothing in Art. VII in any way deals with the issue in hand; and it goes on to say that Art. IV, the management clause, gives the Company the power to assign employees to any crew or turn deemed by it desirable, as long as the proper classification of the employee in question is not disturbed. Thus, it claims, there can be no question of past practice because that becomes of importance only with respect to matters not covered by the contract. Furthermore, it said, the Union did not mention the issue of past practice in the "pleadings," -- that is, in the grievance.

Aside from any additional facts that might be mentioned in the Arbitrator's Comments, below, this should be a sufficient statement of the case.

Issue

Under the terms of the contract between the parties, as set forth in the grievance and in view of Article VIII, Section 5 of the Grievance Procedure, did the Company violate any right of the grievant or of the Union when it denied the request of Herbert Black to be transferred to the job of Piling Inspector on the #1 Streine Shear left vacant on Anderson's crew after the events following the death of Mr. Shaw?

Arbitrator's Comments

The arbitrator has carefully studied the contract provisions involved in this case; and he agrees with the Company that Art. VII, Secs. 1, 4(b), 6 and 8 -- the provisions stressed by the Union as underlying the disposition of the grievance in question -- are pertinent only to situations involving promotions. If Black's requested lateral move is not a promotion, then these Art. VII provisions just referred to are not applicable at all. The arbitrator is inclined to believe that this move was not a promotion. Hence he is inclined to the view that these Art. VII provisions do not support the Union's case.

But this case is not simply a matter of disposing of the provisions of Art. VII. A much sharper issue appears to have arisen by the Union's invocation at the hearing of Art. XIV, Sec. 6, the past practice provision, which reads as follows:

"Section 6. Local Conditions and Practices. This Agreement shall not be deemed to deprive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect at the time it is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

Thus, the Union urged repeatedly in testimony at the hearing that it was long-settled past practice for men in Black's position to make these lateral moves within the same job classification from one crew or turn to another, on the basis of seniority. While the Company did not endorse this testimony at the hearing, and attempted to create the impression that such lateral moves were allowed only at the Company's pleasure or at its actual instance, the arbitrator thought that the practice was pretty well proven. The Company did stress the fact, however, that during the course of processing this grievance, the Union did not base its case on past practice but, rather, rested it on the above referred to provisions of Art. VII.

Furthermore, the Company declared (and the Union completely agreed

with it in this respect) that it had already been held by an arbitrator in another case that such lateral moves could not be made by bumping somebody out of place on the basis of seniority. Thus, it has been established that Black could not have bumped, say, Ludwig, merely because he had seniority over him and wanted for some reason to work on Ludwig's turn. But, as the Union points out, that arbitration award does not govern this case since Black requested to be moved to a job that fell open through Shaw's death. Indeed, as indicated above, Black actually held the job a week or so, until the Company then denied his request and placed Clawson in the job in question.

Now, as against all that the Union contends, the Company strenuously submits that it has the right under the management clause, Art. IV, to control the personnel composition of the crews or turns as long as it does not interfere with other parts of the contract. That is, it could not use the management clause to demote a person or to promote him out of turn, in violation of Art. VII. But, it claims, just as it could have allowed Black to make the move in question, so it could have ordered him to make the move if he had not wished to make it; and by parity of reasoning, it claims that it could deny him the job and put Clawson into it, with no questions asked from any quarter. Indeed, the arbitrator got the impression at the hearing that the Company's chief interest in this case is to test out its rights in this respect, if any. And, for that matter, the Union's chief interest may well be the same.

Another complicating factor enters in here. Take Grotkiewicz, who has seniority over Black but who is Piler Inspector on the #2 Streine shear. (Actually, it appears that Grotkeiwicz had been working on the #1 shear and Shaw on the #2 shear, where Grotkiewicz now is; and when Shaw died, Grotkiewicz took the place vacated by Shaw because he wanted the lighter work, despite the lower rate. But the following supposition nevertheless illustrates what the arbitrator wants to say at this point.) Suppose, on Shaw's death, that Grotkwiewicz suddenly announced his desire to move into the job thus vacated on the #1 shaer, assuming that Shaw had held that #1 shear post and that Grotkiewicz had been in the #2 shear job. Would the Company, recognizing that Grotkiewicz could thus move into a vacated shearman job on the basis of his seniority, still deny him the right to move into a higher paying and more advantageous job in the same job classification? And if it recognized his right to make this move on the basis of seniority, would that be inconsistent with the stand it takes in Black's case? For that matter, was the Company inconsistent when it let Grotkiewicz step down to the #2 shear, assumimg that such step down was pursuant to an alleged right to do so, asserted by Grotiewicz? It would be hard, indeed, casually to deny either of such requests by Grotiewicz with the observation that it was a request for a lateral move within an established job classification which is only one of the rungs of a sequential ladder. And yet, in a sense, it is a move within a job classification, despite the fact that different rates and different work are involved. Indeed, at the hearing, the Union conceded that Grotkiewicz' move down was not a demotion, which might by implication cast some doubt upon whether the move from #2 shear to #1 shear within the same classification was a promotion.

But all this discussion is not getting anywhere definite. The arbitrator would therefore like to make some observations and conclusions.

1. Art. VII, Secs. 1, 4(b), 6 and 8, as invoked by the Union, are not applicable to this case and the Company is not in violation of any of these provisions. That is because they are intended to govern promotions, primarily; and this requested shift of Black's does not involve a promotion. However, there is nothing in Art. VII which gives the Company the right to deny Black's request, any more than there is anything there which gives Black a right to make such a lateral move. Moreover, there is nothing in Art. VII which prevents Black from asking for such a move.

2. Under Art. IV the arbitrator believes that the Company has the right to make assignments of personnel among these crews or turns, within particular job classifications, when it is for the purpose of advancing

efficiency and of serving the best interests of the Company in production. But the arbitrator carefully refrains from asserting that the Company has the right to transfer a Piler Inspector, #1 Streine Shear, on one crew, to Piler Inspector, #2 Streine Shear, on another crew. The difference between such a move, and making the same change on the same crew, is hard to see. And if the change were made by the Company within the same crew, simply to fit its convenience, the arbitrator believes that most impartial judges in his position would be strongly tempted to regard it as a "demotion" and to set it aside.

3. The arbitrator is of the opinion that the testimony sufficiently established a past practice under Art. XIV, Sec. 6, of allowing lateral moves of the kind Black asked to make, so that, on the basis of such past practice, employees situated similarly to Black have a Qualified right to ask for and to be allowed to make such lateral shifts within a job classification from one crew to another where the job in question has fallen open and no bumping is involved. The move of one situated as Black is would normally leave the employee situated as Clawson was at the time of Shaw's death, free to move into the job vacated by Black rather than by Shaw (or, actually, by Grotkiewicz under the facts as they occurred). Conceivably Cyonowicz (or even Ludwig) would prefer Black's job, so that Clawson might then have to take such person's consequently vacated job. But it would still be a case all around of stepping into vacated jobs and not of bumping.

The arbitrator referred to the right, here recognized to be based on past practice, as a qualified right. That is because of the Company's conceded right to move personnel from crew (or turn) to crew (or turn), -- at least within the same rate range of the same classification in the sequence -- in order to serve the Company's interests in efficiency and production. And mere avoidance of the inconvenience of making such changes as are discussed in the previous paragraph of these "Comments" would not be an example of serving the Company's interests in efficiency and production. The arbitrator might observe at this point that he is not impressed by the Company's argument that the frequent occurrence of lateral moves such as Black wishes to make is not evidence of past practice which the Union could rely on under Art. XIV, Sec. 6, since it was, rather, the exercise of a management right under Art. IV. Such argument would be good only if it appeared that such moves had been habitually made at the Company's request rather than at the request of the employees themselves.

4. On the record in this case -- and that includes all documents submitted, plus the transcript of the hearing and the contract between the parties -- Black would seem to have been unjustly denied, on the basis of established past practice, the right to shift laterally to the opening left by Grotkiewicz after the death of Shaw. This conclusion would seem to rest on the fact that the Company's denial of this right was not based on the reason, or was not for the stated purpose, of furthering productive efficiency as a matter of management judgment but was palpably merely to test out as a matter of principle where the parties stood in such situations under the contract between them. The Company's right under Art. IV of the contract to control arrangements and to make shifts of personnel within the same job classification and rate range from crew or turn to crew or turn in a situation of the sort here presented depends clearly on its stated purpose to promote efficiency as a matter of its judgment. Thus, if the change of Black from one crew to another makes no difference to the Company, then Black would seem free to make the change on the basis of past practice. If it does make a difference, then the Company can prevent the change. For the Company retains its right under Art. IV to make appropriate shifts of personnel at any time it establishes that such a shift, in its judgment, is to the best interests of the Company,

Actually in this case as it arose, the arbitrator is of the opinion that the Company must have the award. That is because the Union did not conform to the requirements of Art. VIII, Sec. 5 of the contract, with respect to basing its case on a violation of the past practice provision of the contract, Art. XIV, Sec. 6. Even if the arbitrator believes

that there was shown a past practice of allowing these lateral moves, such as that Black wants to make, he still cannot base an award for the Union on violation of that past practice, because the only parts of the contract in issue before him are Secs. 1, 4(b), 6 and 8 of Art. VII. Of course, it is possible to use evidence of past practice without reference to Art. XIV, Sec. 6, at all. That is, a practice may be proven to illustrate the operation of another part of the contract. Indeed, the arbitrator suspects that the Union in this case introduced evidence of past practice merely to show how the Art. VII provisions were administered. Such a use of past practice does not require mention of Art. XIV, Sec. 6 since it does not put in issue a violation of that provision. But the arbitrator is of the opinion that the Union's use of this past practice evidence did not establish that interpretation of Art. VII, Secs. 1, 4(b), 6 and 8 which the Union contended it did. And since the only use of the past practice evidence to allow an award to the Union is prevented by Art. VIII, Sec. 5 of the contract -- in that the Union's case was not based in part expressly on Art. XIV, Sec. 6 -- the award in this case must be for the Company.

Award

Under the terms of the contract between the parties, as set forth in the grievance and in view of Article VIII, Section 5 of the Grievance Procedure, the Company did not violate any right of the grievant or of the Union when it denied the request of Herbert Black to be transferred to the job of Piling Inspector on the #1 Streine Shear left vacant on Anderson's crew after the events following the death of Mr. Shaw.

Respectfully submitted to the parties,

Charles O. Gregory

May 20, 1953

Charles O. Gregory, Arbitrator.