

ARBITRATION

Inland Steel Company	:	
and	:	Grievance No. 19-D-1
United Steelworkers of America, C.I.O.	:	
Local Union No. 1010	:	

The Submission to Arbitration

The parties addressed the following joint letter to the arbitrator,

May 25, 1953:

"Dear Mr. Larkin:

The Management of the Indiana Harbor Works of the Inland Steel Company and Local Union 1010 of the United Steelworkers of America (CIO) have been unable to settle the above numbered grievance, and in accordance with Step 4, under Section 2, Article VIII, entitled 'Adjustment of Grievances,' of the agreement between the Company and the Union, dated July 30, 1952, the matter is now to be submitted to an impartial umpire for final determination.

The question to be decided in the subject case is whether or not the Company was in violation of Article VI, Section 5 of the Collective Bargaining Agreement when it posted a work schedule for the week of October 6, 1952 for employees of the Field Force Department. A copy of the Collective Bargaining Agreement is enclosed so that you may familiarize yourself with its provisions as regards this particular dispute.

You have been agreed upon by the undersigned to act as impartial arbitrator. We would, therefore, appreciate word from you regarding your willingness to serve. The week of August 10, 1953 has been chosen by both the Company and the Union as a possible date for the arbitration of this grievance. If you are available, will you be kind enough to submit a date during the week of August 10, 1953 for a hearing. This will eliminate any danger of possible conflict with other matters involving either management or the union.

This hearing is to be held in the Labor Relations meeting room, Plant No. 1 Clockhouse of the Indiana Harbor Works Plant of the Inland Steel Company in East Chicago, Indiana at a time and date mutually acceptable to all concerned. When a date is finally agreed upon, we will advise you with respect to the type of transportation to take from Chicago, Illinois and arrange to meet you if necessary. The expense and salary incident to the services of the impartial umpire shall be shared equally by the Company and the Union.

- continued -

"Very truly yours,

INLAND STEEL COMPANY

s/ by Herbert Lieberum
Superintendent
Labor Relations

s/ by Joseph B. Jeneske, Representative
United Steelworkers of America, CIO
3703 Euclid Avenue
East Chicago, Indiana"

The undersigned agreed to serve, and the date of August 13, 1953 was accepted as the date for the hearing at the Company's offices. The following appearances were made:

For the Union --

Mr. Joseph Jeneske, International Representative
Mr. James O'Connor, Grievance Committeeman
Mr. William Denny, Assistant Grievance Committeeman

For the Company --

Mr. H. C. Lieberum, Superintendent, Labor Relations
Mr. T. G. Cure, Assistant Superintendent, Labor Relations
Mr. D. N. Evans, Assistant Superintendent, Field Forces
Mr. L. R. Mitchell, Division Supervisor, Labor Relations
Mr. J. Hendricks, Division Supervisor, Labor Relations
Mr. R. Royal, Division Supervisor, Labor Relations

A record of the hearing was prepared by the firm of Peter J. Klein, Court Reporters, a copy of which was forwarded to the arbitrator. Mr. Cure submitted a summary statement and argument on behalf of the Company, September 5, 1953; and, in accordance with an agreement at the conclusion of the hearing, Mr. Jeneske prepared a rebuttal statement, September 16, 1953, after which the record was closed.

Some Pertinent Facts

Article VI, Section 5 of the Agreement is given below.

"Section 5. (a) Unless otherwise mutually agreed, the schedules now operative throughout the plant shall remain in effect for the life of this Agreement, subject to the provisions of Section 5 (b) below.

"(b) Determination of the daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time. In the non-continuous operating departments the Company shall, where practicable, make reasonable effort to schedule employees so as to avoid working them on Sunday.

To accommodate the off-period planning of employees, the Company shall, insofar as reasonably possible and consistent with proper, efficient and economical operation of the plant, post work schedules for periods not less than a work week in locations where they can be readily observed by those affected twenty-four (24) hours before the end of their last turn worked in the work week preceding the work week for which the schedule is posted. Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made. In this connection it is recognized by the Union that changes required by power or mechanical breakdown or other conditions beyond the control of the Company or because of a changed condition in the business of the Company are not arbitrary changes in schedules and that such causes may require changes therein at any time. If it is alleged that arbitrary schedule changes have been made, they may be made the subject of a grievance, including arbitration. The Company shall notify the employee or employees involved of changes in the posted schedules as far in advance of the time effective as is reasonably possible.

General departmental changes in schedules shall be made known to the Union Grievance Committeeman for the department involved as far in advance as is reasonably possible."

As indicated in the grievance form (Company Exhibit "A"), the Union contends that the scheduling of the Field Forces employees for the week of October 6, 1952, violated the above contract provisions. It is claimed that the schedules operating throughout the plant at the time of the conclusion of the July 30, 1952 Agreement was a Monday through Friday schedule, and that the "New Construction" or Field Forces employees had such a schedule. This Monday through Friday schedule, the Union contends, was not only in effect for some weeks before the signing of the 1952 Agreement, but also continued in effect until the week in question -- that of October 6, 1952.

The Company's contention is that the nature of the work of the Field Forces is such that it cannot be strictly held to a Monday through Friday schedule. The Company tries to hold to such a schedule, whenever practicable; but it is the

Company's position that there has never been a set five-day, Monday through Friday schedule for these particular employees.

Each side has submitted a series of schedules to prove its contention regarding the schedules "in effect" at the time of the making of the 1952 Agreement, and subsequently. (Company Exhibits "B," "C" and "D"; and Union Exhibits 3, 4, 5, 6, 7, 8, 9, and 10)

The Issue

Did the Company violate Article VI, Section 5 of the parties' 1952 Agreement when it posted the work schedule for the employees of the Field Forces Department for the week of October 6, 1952?

The Union's Position

The Union points out that the schedules in effect at the time of the signing of the Agreement are a matter of record. Union Exhibit 5, which consists of carbon copies of the posted schedules for the Riggers from December 30, 1951 to June 8, 1952, shows a consistent schedule of Monday through Friday, with only paid holidays omitted, and with a few variations where employees were given added overtime assignments, which in one or two instances cut across the weekend. In any case these appear to have been premium pay situations. Union Exhibit 6, contains carbon copies of the posted schedule for the Riggers from the date of the resumption of work under the new 1952 Agreement (August 4, 1952), until December 14, 1952, with the exception of the week of October 6. This shows fairly consistent Monday through Friday schedules.

Union Exhibit 2 is composed of carbon copies of the posted schedules of the carpenters from January 3, until June 2, 1952. These are fairly consistently

Monday through Friday schedules. In like manner Union Exhibit 3 shows that the posted schedules for the carpenters from September 4, 1952 until December 4, 1952, exclusive of the week of October 6, were consistently Monday through Friday schedules. Union Exhibit 4 and Company Exhibit "D" show the marked deviation from the usual pattern in the week of October 6, 1952, which gave rise to the instant grievance.

Union Exhibit 13, carbon copies of the posted schedules for the Pipe Shop employees for 1952, shows a fairly consistent Monday through Friday assignment, except that certain employees were assigned a six-day schedule for the week of October 6.

The few variations which occurred throughout the schedules for the calendar year 1952, appear to have resulted from holidays, from a few six-day per week assignments with premium pay, and from an occasional case in which there was some mutual understanding with the individual employees involved. All of this evidence generally supports the Union's contention that there was a consistent policy of assigning regular schedules, Monday through Friday, for the Field Forces employees at the time of the making of the 1952 Agreement.

Also the Union insists that this fairly consistent pattern was the result of conversations following the bringing in of outside contractors who enjoyed preferential treatment in the form of a higher premium pay rate. This understanding was reached, the Union contends, in 1951, after the Inland employees were upset by the higher premium rates enjoyed by those brought in by the outside contractors.

The Company's Position

The Company contends that there was no agreement reached in June of 1951, (as the Union has claimed) to establish a Monday through Friday schedule for the Field Forces employees. The work of this department is such that the schedule must remain flexible. It is claimed that varying schedules have prevailed both prior to and subsequent to June 1951, and both before and after October 6, 1952. Therefore, there has been no violation of Article VI, Section 5.

Company Exhibit "B" shows schedules for the early weeks of July 1951. At this time most of the Field Forces employees were working six days per week. Many of these worked Monday through Saturday. A few took Monday off and worked Saturday and Sunday. Company Exhibit "C" begins with schedules for the Boiler Shop for the week ending March 9, 1952. The first three pages lists all employees on a Monday through Friday schedule. The next three pages (one of which is labeled "Welders") shows seven men out of forty-five scheduled for Saturday work, and off on Monday, or off Monday, Tuesday and Wednesday.

The same exhibit includes the carpenter's schedule for the week of May 26, 1952. Since this was a holiday week, most of the carpenters worked either Saturday or Sunday, following the Friday holiday off. Then we find machinists and service shop employees schedules for the week of May 21 to 27, 1951, prior to the alleged understanding concerning a Monday through Friday schedule. Like the other 1951 schedules, cited above, many employees were assigned to a six-day week, and a few were off Monday and worked Saturday. This type of schedule continued on into August and September 1951. The next deviation from the Monday to Friday schedule shown in this exhibit for Machine Shop is for the holiday week of May 26, 1952, where most employees worked either Saturday or Sunday following the Friday holiday.

The Company has also chosen schedules for the Riggers largely from the 1951, six-day week period. The January 21 to 27, 1952 schedule for these employees (the same as that in Union Exhibit 5) illustrates that most employees worked only five days; but a few worked from 8:00 A.M. to 8:00 P.M., and 10 of the 160 employees worked on Saturday.

The Field Pipe Shop employees followed pretty much the same general pattern, with more six-day per week schedules in 1951, and with essentially a five-day, Monday through Friday assignment in 1952, with exceptions in the holiday week ending June 1, 1952 (Company Exhibit "C").

From this the Company insists that there was not a regular Monday through Friday schedule in effect at the time of the signing of the current Agreement on July 30, 1952.

Discussion

The first point to consider is the Union's claim that there was an agreement reached in June 1951, following conversations between Committeeman James O'Connor and Management representatives, to adhere to a Monday through Friday schedule for the Field Forces employees. The Company claims that no such agreement was reached; and that Mr. O'Connor and the foreman had no authority to make any such agreement. The only valid Agreements controlling this situation are the regular Agreements of 1947 and 1952. However, it is not denied that there were conversations on this subject, and the Company admits that whenever practicable such a schedule is adhered to. Union Exhibits 3, 4, 5, 6, 7, 8, 9, 10 and 13, include the schedules for the weeks in which the plant was operating for the calendar year 1952, exclusive of the week of October 6. The grievance arose over the irregular assignments of the week of October 6. Despite a few minor irregularities

during certain other weeks (due largely to intervening holidays) the pattern of schedules for 1952 was quite consistently Monday through Friday. Thus there may have been no written agreement. There may have been no oral commitment by parties authorized to make them. But what came out of all this was a calendar year of schedules for the Field Forces employees which was pretty consistently Mondays through Fridays. Such were the schedules in effect on July 30, 1952, when the parties signed their current Agreement.

This Agreement (Section 5) specifies that "Unless otherwise mutually agreed, the schedules now operative throughout the plant shall remain in effect for the life of this Agreement, subject to the provisions of Section 5 (b) below." The qualifying sub-section (b) provides for the advance posting of schedule changes and states that "Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made." It also provides that changes due to "breakdown or other conditions beyond the control of the Company" shall not be considered arbitrary changes. Such emergencies may give rise to justifiable changes at any time.

But no such emergency is claimed for the week of October 6, 1952. Rather the Company simply denies that there was a Monday through Friday schedule in effect at the time of the July 1952 Agreement or in October 1952. The documentary material which it has submitted to prove that there was no regular Monday through Friday schedule in effect for the Field Forces employees in July 1952, covers largely the months of 1951. These schedules may show that there was no change effected in June 1951, but they do not prove the existence of a very fluid schedule in 1952, when the Agreement was concluded. In fact few of the schedules offered in evidence by the Company pertain to the weeks of the calendar year 1952.

The parties are in dispute as to the pertinence of Union Exhibits 11 and 12, the opinions of two arbitrators in previous cases. The Union contends that the decision of Arbitrator Albert I. Cornsweet in Grievance No. 17-C-60, dated November 28, 1950, is significant in that the Arbitrator found the Company in violation of Article VI, Section 4 of the 1947 Agreement, which is essentially the same language as that in Article VI, Section 5 (a) of the current Agreement. The Arbitrator did hold that the Company had made an arbitrary decision to reschedule certain employees where an agreement could not be reached, and that in doing so it was in violation of Article VI, Section 4.

While the facts and circumstances in Grievance No. 17-C-60 were different from those now before us, the problem was somewhat the same. If we could agree with the Company's major premise in the instant case, we should have to admit that Arbitrator Cornsweet's decision is immaterial here. The fact that there was an established schedule in effect in the prior grievance seems not to have been in dispute. There is a dispute on this point in the matter now before us. But we think that the documentary evidence submitted by the Union -- the posted schedules for 1952 -- establish that there was a regular Monday through Friday schedule in effect for the Field Forces employees when the new Agreement was signed. And since that was true, the Cornsweet decision is not immaterial. It is, we think, very pertinent to the matter now before us.

It matters not how the Monday through Friday schedules for practically the entire calendar year of 1952 came into being. The fact is, such schedules were regularly posted both before and after the making of the 1952 Agreement. Such schedules were therefore in effect. And, unless otherwise mutually agreed, such schedules shall remain in effect for the life of the Agreement.

The Company claims that the nature of the work performed by the Field Forces employees is such that schedules for the department must be kept fluid.

Section 5 (b) provides that in emergencies the Company may vary such schedules. But the record does not show that there was any emergency which should have warranted a sudden change of schedules for the week of October 6, 1952. And since there appeared to be no extenuating circumstance, we must conclude that the irregular schedule posted for this week, without prior agreement, was an arbitrary change not warranted under Article VI, Section 5. The grievance must, therefore, be sustained.

Award

It is the decision of the Arbitrator that the schedule posted for the Field Forces employees for the week of October 6, 1952, constituted a change from the regular schedules "operative throughout the plant" at the time of the signing of the July 30, 1952 Agreement, and was, therefore, in violation of Article VI, Section 5.

Schedules for the Field Forces employees shall continue on a Monday through Friday basis for the duration of the parties' Agreement of July 30, 1952, unless changes are mutually accepted. However, nothing in this award shall be used to limit the Company's reserved right to change schedules in cases of mechanical breakdowns or other emergency situations beyond its control, as provided in Section 5 (b) of Article VI.

September 25, 1953


John Day Larkin, Arbitrator