Arb 104

Inland Steel Company	)	16-C-285
Indiana Harbor Works	)	16-C-286
and	) Grievances Nos.	17-C-117
United Steel Workers, CIO	)	17-C-118
Local 1010	)	

Hearing, February 1, 1954
Transcript Received, February 9, 1954
Award, March 15, 1954

Chas. B. Gordy

Impartial Arbitrator

THE PROBLEM

"The question to be decided in the subject grievances is whether or not the Company was in Violation of Article V, Section 5 of the Collective Bargaining Agreement of May 7, 1947 (Dec. 1, 1950 Supplement and Revision) and/or Section 6 of the Wage Rate Inequity Agreement of June 30, 1947 when it denied the requests of the subject grievances for the installation of "active" incentive plans for maintenance personnel in the Cold Strip and Tin Mill Departments." Letter of stipulation to the arbitrator dated December 1, 1953.

The Union Position.

The Union position may be explained briefly, by a quotation from the statement of the grievance, or grievances, in the first step filing of June 5, 1951 for 16-C-285, 16-C-286 and January 8, 1952 for 17-C-117, 17-C-118:

"For over two years the Mechanical (or Electrical) Employees have been working under a 'Frozen Incentive' which does not adequately compensate for their efforts. Request that a new incentive be installed equitable and comparable to incentive earnings for the Mechanical (or Electrical) Employees in the 44" and 76" Hot Strip. Retroactive pay to April 18, 1949 (16-C-285, 16-C-286, 17-C-118) or May 16, 1949 (17-C-117)" pp. 6, 7 of Transactions.

In 1949 revisions were made in the Cold Strip and the Tin Mill. "The revisions were major . . ." p. 7 of Transactions. The employees, concerned in these grievances, were "called in" and told that their incentive plans had become inappropriate, and the company was instituting a "frozen guarantee" in lieu of the incentive plans in effect at the time. p. 7 of Transactions. The calling-in date was April 18, 1949, except for Tin Plate Mechanical when it was May 16, 1949. pp. 37, 122 of Transactions. The Union contends that "there was no agreement sought or anything" (on the "frozen" rates, or "average hourly earnings of incumbents", to use the terminology on p. 10 of the May 7, 1947 Agreement and Supplements) p. 8 of Transactions. Furthermore, ". . . from the time they froze the rate, led the Employees in the Maintenance and Electrical to believe that this was a temporary measure and that a new incentive would be developed . . ." pp. 138, 139 of Transactions.

Between the time the existing incentive plans were "frozen" (or average earnings were begun), and the filing of the grievances"The Union consistently went in and asked about the new plans. . . and finally on June 5, 1951 the Union filed grievances. . . requesting that a new incentive plan be developed. They had been put off long enough and, of course, they felt that more than an adequate amount of time had passed. . ." pp. 8, 109, 117, 127 of Transactions.

The first and third step answers to these grievances were "unsatisfactory to the Union and the Union processed the case on to arbitration" (Dec. 1, 1953) p. 11 of Transactions.

In the period intervening between the letter of stipulation (Dec. 1, 1953) and the hearing date (Feb. 1, 1954), ". . . The Company did make a presentation of some rates to the Union, and in connection with these particular grievances" pp. 12, 30 of the Transactions, Union Exhibits 8, 9. However, the Union contends that there was not time to determine the appropriateness of the rates presented (p..13 of Transactions); that the rates were "forced" on them (p. 13 of Transactions) and that the company refused to consider the "effective date" (retroactive feature) of these rates as April 18 (or May 16 in the case of grievance 17-C-117) 1949.

Another facet of the Union case is the legality of the "frozen" rates. "Actually, when this thing became frozen, there is some question in the eyes of the Union as to whether or not it was done properly and as to whether or not the contract provides for the thing that

was done. It is my opinion that there is no provision in the contract for an establishment of a rate, frozen rate, as they did here." p. 14 of Transactions. ". . . and certainly there is no application there that can justify the Company in saying that they have established this frozen bonus under the terms of Section 6 of the Wage Rate Inequity Agreement". p. 27 of Transactions. Also pp. 106, 127 of Transactions.

In summary, the Union contends that these grievances are proper; that the effective date (retroactive feature) of any plan should be April 18, 1949 (except for grievance 17-C-117 where May 16, 1949 is the appropriate date) pp. 28, 111, 114, 119, 136 of the Transactions; and that there should be a Wage Incentive Plan provided. p. 114 of the Transactions.

The Company position

The Company first calls attention to the jurisdiction and authority of the Arbitrator, ". . . to interpret, apply or determine compliance with this agreement. He shall have no power to add to, detract from, or alter in any way the provisions of this Agreement." p. 47 of Transactions, p. 33 of May 7, 1947 Agreement.

The only issue before this Arbitrator, according to the Company, is the matter stated in the jointly-signed stipulation of Dec. 1, 1953. p. 47 of Transactions. This was quoted in full above under the heading "The Problem".

The Company's position on these grievances is that the rates established in April and May of 1949 (p. 37 of Transactions) are valid rates under the provisions of Article V, Section 5 and Article V, Section 1 of the Collective Bargaining Agreement. p. 48 of Transactions. The rates in question (p. 37 of Transactions) became effective in April and May 1949, and these became valid rates. ". . . when the parties stated in Article V, Section 1 of the December 1, 1950 Collective Bargaining Agreement that rates in effect on November 30, 1950 are to remain in effect". pp. 48, 58, 88, 90 of Transactions. ". . . the Union actually contended that the wage payment rates . . . had become inappropriate. . . . In the opinion of the Company, the wage payment rates of this type could never become inappropriate. . . because the wage payment rates provided that a fixed hourly payment equivalent to the previous occupational average earnings rate be paid". pp. 65, 66 of Transactions. "We commented further that we have, of course, revised these fixed payments in December and June of 1952, or July of 1952 and then again in June of 1953 when we signed new Collective Bargaining Agreements that provided for general wage increases" p. 88 of Transactions.

The Company further contends that, since valid rates are in effect which have not become inappropriate, there can be no question of retroactivity ". . . cannot even be considered. . ." pp. 78, 79, 102 of Transactions.

Limit 4 (or sub-section 4, paragraph 2 of section 6 in union terminology) page 7 of the Wage Rate Inequity Agreement of June 30, 1947 figured prominently in the case. This "limit" is quoted in full starting on p. 71 of the Transactions. In the first paragraph of this "limit", provision is made to adjust all "Cost or Tonnage Bonus Plans" to provide average hourly total earnings in no case less than five per cent in addition to the adjusted base or guaranteed minimum rate. The second paragraph of the same "limit" provides for the elimination of the "Cost Bonus Plan", and it was agreed that "some logical incentive plan" incorporating this arbitrary five per cent bonus will be designed. pp. 71, 73 of Transactions. The Company contends that this second paragraph of "limit" 4 ". . . has no reference to the present dispute in that the issue before the Arbitrator does not involve a 'Cost Bonus Plan', p. 73 of Transactions, and ". . . therefore, there can be no violation of Section 6 of the Wage Rate Inequity Agreement as alleged by the Union". p. 77 of Transactions. "The distinction that we make here is that the previous wage incentive plans in effect in the Cold Strip and Tin Mill for Mechanical occupations were not Cost Bonus Plans. They were

Tonnage Bonus Plans." p. 97 of Transactions. The "plans in effect" were those prior to April and May, 1949. "So that we would say that this particular provision of the Wage Rate Inequity Agreement could not apply to this particular dispute. Therefore, if it doesn't apply, the Company could not be in violation . . .". p. 97 of Transactions.

The Company, further, calls attention to Article V, Section 5 of the Agreement, p. 9, where it is stated that "wherever practicable, it will be the policy of the Company to apply some form of incentive to the earnings of the employees when their efforts can readily be measured. . ." "The Company clearly has the right to determine when operating conditions are standardized and it is practicable to install an incentive plan to measure the performance of the individual or group concerned. p. 78 of Transactions". The Company does not have to replace an existing fixed hourly wage payment rate with an incentive plan until such an incentive plan relating earnings to production performance is practicable in the opinion of the Company as provided in the Collective Bargaining Agreement". p. 79 of Transactions. The relation of this consideration to the question under dispute is, of course, the modernization program embarked upon following War II; and the consequent lack of standard conditions prevailing. pp. 7, 35, 78 of Transactions. The Company calls attention to the fact that the procedure followed in this case";. . . was no different that in any of the other instances in the Cold Strip or Tin Plate Department, or for that matter in the plant, where a previous plan, previous wage incentive plan had become inappropriate". pp. 91, 92 of Transactions.

In summary, the Company contends that the rates established in April and May of 1949 were valid rates under Article V, Section 5 of the 1947 Agreement and Article V, Section 1. of the Agreement, Supplement, signed December 1, 1950; since these rates have not become inappropriate, there can be no question of retroactivity; that Section 6 of the Wage Rate Inequity Agreement does not apply to these grievances, hence there can be no violation; that the timing of the introduction of wage incentive plans depends upon the judgment of the Company according to Article V, Section 5 of the agreement.

THE FACTS

The Exhibits	Company	Union
Grievances, 1st and 3rd step. 16-C-285 16-C-286 17-C-117 17-C-118	A	3,4,5,6,7
Letter dated 11/3/53 Jeneske to Lieberum		1
Letter dated 11/18/53 Lieberum to Jeneske		1
Article V, Section 5 Dec. 1. 1950 Agreement	B	
Wage Rate Inequity Agreement of June 30, 1947 Section 6	C	
Files 140-V 77-1016 77-1104 62-M-4 78-2119 78-2202	D	

The Exhibits	Company	Union
Memorandum Payment of maintenance Occupations as a result of Intra-Plant Inequity Agreement.	E	
File 78-2117		8
77-1025		9

In addition to the above, the Company filed a 17 page brief, and the transcription record of the hearing of February 1, 1954 covered 148 types pages.

Historical background for the four grievances

1. The following statement, Union Exhibit 1, contains the record of the four grievances and the wage plans in effect to the suspensions in April and May, 1949.

Grievance		Plan	Effective	Suspended
16-C-285	Cold Strip	E.E--62-M-3	9/8/47	4/18/49
16-C-286	Cold Strip	M.E.--62-M-3	9/8/47	4/18/49
17-C-117	Tin Mill	M.E.--62-M-2C	9/8/47	5/16/49
17-C-118	Tin Mill	M.E.--62-M-2C	9/8/47	5/16/49

The suspended plans noted above were replaced by the following plans (p. 37 of Transactions, Company Exhibit D):

Plan	Effective	Superceded by	Effective
140-V Cold Strip M.E.	4/18/49	77-1016	7/9/51
140-V Cold Strip E.E.	4/18/49	77-1104	7/9/51
62-M-4 Tin Mill E.E.	4/18/49	78-2202	9/1/51
62-M-4 Tin Mill M.E.	5/16/49	78-2119	9/1/51

2. The Union consistently asked about new plans. pp. 8, 109, 117, 127 of Transactions.

3. The four instant grievances were filed as follows:--

16-C-285	6/5/51
16-C-286	6/5/51
17-C-117	1/8/52
17-C-118	1/8/52

4. The 1st step answers to the above grievances, with slightly different wording from the Cold Strip and Tin Mill Supervisors, were that the Industrial Engineering Department was reviewing existing plans and upon completion of their study an answer would be forwarded.

5. By mutual agreement, the second step in the grievance procedure was waived in the case of 16-C-285 and 286.

6. In the case of grievances 17-C-117 and 118, the second step answers repeated those given in the first step.

Perhaps it should be pointed out here that the Company third step answers do not refer to the "frozen" bonus plans effective after April and May, 1949; but to the plans in effect between September 8, 1947 and April and May, 1949.

In Union Exhibit I, Jeneske to Lieberum, of 11/3/53, occurs this statement: "These grievances are filed because of a commitment of long standing made by the Company on June 30, 1947, under the procedures of the Wage Rate Inequity Agreement which is still to be fulfilled by the Company", and ". . . it only seems right, that the Company would fulfill its entire commitment under this program by instituting new incentive plans on all maintenance jobs in the plant still operating under the so-called '5 percent Guaranteed Bonus Plans'."

The Company states, p. 73 of Transactions, that the second paragraph of "limit 4" has no part in this arbitration, for ". . . the present dispute . . . before the Arbitrator does not involve a 'Cost Bonus Plan'." The date of the Wage Rate Equity Agreement was June 30, 1947, the effective date of the incentive plans for maintenance workers in the Cold Strip and Tin Mill was September 8, 1947." The distinction that we make here is that the previous wage incentive plans in effect . . . were not Cost Bonus Plans. They were Tonnage Bonus Plans. . . . So that we would say that this particular provision of the Wage Rate Inequity Agreement could not apply to this particular dispute. Therefore, if it doesn't apply, the Company could certainly not be in violation. . ." p. 97 of Transactions.

In the first paragraph of "limit 4", it is stated that: ". . .'Cost or Tonnage Bonus Plans'. . . shall be adjusted to provide. . . in no case less than five (5) per cent in addition to the adjusted base or guaranteed minimum rate. . ."

In a memorandum signed October 29, 1947 by Jeneske and Gillies, agreement was reached as to "payment of maintenance occupations as a result of Intra-Plant Inequity Agreement." pp. 77, 97 of Transactions, and Company Exhibit E. In the first paragraph of this agreement, provision is made for elimination of Cost Bonus Plans, which corresponds to the second paragraph of "limit 4". The second paragraph provides for the continuance of "other incentives". The third paragraph establishes a floor on earnings of the "standard base rate plus 5 per cent"; and provides further that if earnings exceed the standard base rate plus 5 percent, these higher earnings will be paid.

The Retroactive Contention
in this arbitration

Before stating the facts and contentions of the parties regarding this feature it will be well to refer to the contract which delimits the authority of the Arbitrator, and sets up guide posts for the determination of retroactivity.

As to authority conferred upon the Arbitrator, on page 33 of the Agreement-both that of May, 1947 with supplements, and that of July, 1952-occurs this statement: "It is understood and agreed that the Arbitrator shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement. He shall have no power to add to, detract from or alter in any way the provisions of this Agreement." Should this Arbitrator be emotionally impressed with the idea of what should be rather than what is, in all honesty and in all conscience he is not permitted to so indulge himself, by express terms of the contract, he can only "interpret, apply or determine compliance".

As to the determination of retroactivity, section 4 of Article VIII provides the guide posts. This Arbitrator will quote from the contract of July 30, 1952, although the contract dated May 7, 1947 has essentially the same phraseology, but with different sections and page numbers. On page 34 of the contract occurs this statement: "Settlement of grievances may

"In view of these facts (changed conditions) the Company developed new wage payment rates which provided for a fixed hourly payment which was equivalent to the previous occupational average earnings rates. In other words, that was the base and incentive earnings" p. 52 of Transactions.

"These newly developed wage payment rates were presented to the Cold Strip and Tin Plate Departmental Grievance Committeemen. An agreement was reached . . ."

". . . the newly installed rates . . . became the contractual effective rates . . . p. 53 of Transactions.

As noted above, present plans were made effective in April, 1949. In the revision of the contract December 1, 1950 occurs this statement on page 7, "All incentive plans used in computing incentive earnings (including all methods, based and guaranteed minimums under said plans) in effect on November 30, 1950 shall remain in effect for the life of this Agreement except as changed by mutual agreement, or pursuant to the provisions of Section 4, 5, 6 of this Article". The plans in effect at this time had the incentive element in them provided by the previous three months earnings under the plans suspended in April and May, 1949.

The Union states, p. 22 of Transactions, that: "There is no provision, in the contract for . . . a frozen guarantee of that nature. . . .and the provisions there are for the establishment of new incentives and not for the establishment of guarantees. . ." "average earnings . . . isn't provided for, in my opinion, in the contract." p. 112 of Transactions. "The representative of the Industrial Relations Department at that time. . . told these men . . . the Company was going to freeze the bonus until such time as they could figure out a new bonus that would be appropriate under the circumstances. If I remember correctly, there was no actual agreement. This was an assertion on the part of the Company . . ." p. 116 of Transactions.

The Wage Rate Inequity Agreement of 1947, and Company Exhibit E

The Inequity Agreement, signed June 30, 1947, is involved in these grievances because the Union claimed in the first step statement that the Company was in violation of Section 6, as well as Article V, Section 5 of the Agreement. In the third step answers, the Company stated that ". . . the suspended incentive rate (rates) . . . in effect from September 8, 1947 to April . . . (and May), 1949, was developed and installed in accordance with the applicable provisions of Section 6 of the Wage Rate Inequity Agreement.

"Yes, on page 7, there is a term there 'Cost or Tonnage Bonus Plans'. That really had no meaning. . . In all cases throughout the plant I think they eliminated the Cost Tonnage, rather the Cost Bonus features because they felt that that was not a proper method of coverage. . . and in applying this 5 per cent it is merely a formula designed to set up methods of payment of retroactive pay and determine earnings until new plans could be developed." p. 25 of Transactions. "Section 6 . . . makes no provision for any procedure other than what we have in the contract and directly refers to the contract which establishes how incentive plans shall become effective. And certainly there is no application there that can justify the Company saying that they have established this frozen bonus under the terms of Section 6. . ." p. 27 of Transactions. ". . . yet in every application of retroactive consideration and development of rates for these jobs in the Cold Mill and Tin Mill, they were treated under that section of the contract and retroactive consideration was paid on the basis of five per cent". p. 110 of Transactions.

2. It was determined that the incentive plans in effect((1) under the heading "Historical background") would be significantly affected by the program. "Due to fluctuations in mill production and in the number of maintenance employees scheduled, it was evident that the existing maintenance plans would be rendered inappropriate under the provisions of Article V, Section 5 of the Collective Bargaining Agreement. As a result of these changed conditions, the incentive earnings would have risen abnormally in some instances, and in other instances the incentive earnings would have fallen abnormally if the previous wage incentive plans would have remained in effect." pp. 35, 36 of Transactions.

3. When the rates, for discussion, p. 85 of Transactions, were presented to the Union on January 28, 1954, the Company considered that conditions "are much better" p. 80 of Transactions. "... and so we have measured these particular plans against the major units operating that they service . . . and we now feel that those plans that are operating on the direct units are in a light that we can predict pretty reasonably where we stand." p. 83 of the Transactions.

The Validity Contention for
rates effective in April, 1949

The Company calls attention to "the basic premise" of Article V, Section 5 of the Agreement, p. 52 of Transactions, as it pertains to this arbitration. A procedure is set forth in which the interests of both parties are protected from the effect of changed conditions on the appropriateness of wage incentive plans; the Union is protected in that the previous earnings level is not reduced; and the Company has the opportunity to establish an appropriate wage incentive plan based upon these changed conditions.

Quotations from Article V, Section 5 will be helpful in this matter of "Valid" rates. ". . . the Company shall have the right to install incentive rates in addition to existing hourly rates whenever practicable in the opinion of the Company. It is also recognized that the Company shall have the right to install new incentives to cover (a) new jobs, or (b) jobs which are presently covered by incentives but for which the incentive has been reduced so as to become inappropriate . . . In such cases, or in cases where an incentive plan in effect has become inappropriate by reason of new or changed conditions resulting from mechanical improvements made by the company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards, the Company shall have the right to install new incentives. . ." Later in Article V, Section 5 occurs this statement in step 5: "Until such time as the new incentive is agreed upon or, in the event a grievance is processed to arbitration, until an arbitrator's decision has been rendered, the average hourly earnings of incumbents of the job as of the date the new incentive is installed shall not be less than the average hourly earnings received by such incumbent under the incentive plan in effect during the three (3) months immediately preceding the installation of the new incentive."

Pursuant to these clear and definite statements in the Contract, the Company did suspend, in April and May, 1949, the incentive plans in effect since September 1947. The plans installed in April, 1949 were superseded or revised in July 1951 and September, 1951 by other plans as indicated on page 5 of this award. Moreover, these "other plans" each have the following notation placed on them: "The above hourly rates have been rewritten to include the general wage increase of June 12, 1953". The plans installed in April, 1949 all have the following notation placed on them: "These rates are subject to revision in the event of any change in equipment or methods affecting production." On sheet 1-a of plan 77-1016 five changes are indicated in the plan with effective dates in the cases of three of them as follows: April 14, 1952, January 19, 1953, December 21, 1953.

7. The third step answers were given on the following dates:

16-C-285, 286	February 19, 1953
17-C-117	February 17, 1953
17-C-118	February 19, 1953

8. The third step answers to all grievances except for the differing suspended dates noted in (1) above are identical.

". . . the incentive rate was suspended but the aggrieved employees continued to receive earnings in the form of a fixed payment, which are equivalent to their incentive earnings during the three (3) months immediately preceding April 18, 1949 (or May 16, 1949). It was necessary to suspend the incentive rates because of the Cold Strip (or Tin Mill) modernization and expansion program. During this program, maintenance requirements, production schedules and equipment installation and performance have been some of the factors that have made it impossible to establish and maintain a standard maintenance force.

"the Company has spent considerable time and effort in an attempt to develop a sound basis for the establishment of incentive rates for maintenance personnel in the Cold Strip (or Tin Plate) Department. However, at the present time, a satisfactory basis has not been developed. . . ."

9. On November 3, 1953 Mr. Jeneske addressed a letter to Mr. Lieberum calling attention to the long standing of the instant grievances; that the commitment contained in Section 6 of the Wage Rate Inequity Agreement had not been satisfied by the Company; that since the third step answers, new incentive plans for maintenance employees had been installed in Hot Strip Mills, the Blast Furnace, and Coke Plant; that the Union should not be forced to arbitration to obtain a contractual commitment.

10. On November 18, 1953 Mr. Lieberum replied to Mr. Jeneske. In this letter, he stated that effective plans did exist until, (effective and suspended dates are given in (1) above) due to . . . modernization and expansion program the plans were suspended because they became inappropriate; that from the suspension date to the current date the maintenance personnel have been receiving their previous average earnings; that these plans (suspended) were of the "tons per man hour" type providing incentive earnings in excess of the arbitrary bonus of five per cent; and that the Company is continuing to attempt to develop a sound basis for the establishment of incentive plans for maintenance personnel in the Tin Mill and Cold Strip Mills.

11. The four instant grievances were posted for the fourth step, arbitration, in the grievance procedure in a letter of stipulation dated December 1, 1953.

12. On January 28, 1954, the Company made a presentation of rates to the Union. p. 12 of Transactions, Union Exhibits 8, 9. The Company claims that these rates, since they are on yellow paper (p. 84 of Transactions), were only in the discussion stage; and that this presentation is not a matter in dispute in this arbitration. p. 83 of Transactions.

The Modernization Program

1. After War II, the Company embarked on a modernization and expansion program, which in the main began in the spring of 1949. pp. 7, 35 of Transactions. These plans resulted in the installation of new equipment, modification of existing equipment, and changes in processes.

or may not be retroactive as the equities of the particular cases may demand, but the following limitations shall be observed by Arbitrators where the Arbitrator's award is retroactive. In any case where the Arbitrator determines that the award should be retroactive, the retroactive date shall be as follows: (a) cases involving rates of pay or new or changed jobs. . .; in accordance with the provisions of section 6 of Article V . . ." Section 6, p. 11 to 13, in turn, is concerned with "Description and Classification or new or changed job", a plan for ranking jobs by job content set up by the Wage Rate Inequity Agreement of June 30, 1947. In neither the first step statement of these grievances, nor at any time in the hearing, did the Union raise the question of job classification and description. On the other hand, the Union case is built upon three things: the grievances are proper; there should be an incentive plan; and such a plan should be made retroactive to April and May, 1949, pp. 114, 126, 136 of Transactions.

Some further light may be shed on this retroactive question by consulting Article V, section 5. Nowhere in this section on "Incentive Plans" is retroactivity mentioned; but this statement, pp. 10 and 11, does occur: ". . .and the decision of the Arbitrator shall be effective as of the date when the new incentive was put into effect."

This Arbitrator will now refer to facts presented and contentions made by the parties; the facts are few, but the contentions are many.

The plans suspended in April and May, 1949 were incentive plans, the plans established in their stead did contain an incentive feature by virtue of the ". . . three (3) months "rule provided in Article V, section 5, procedure 5 of the Agreement. It is perfectly proper for the Union to contend that the incentive is not enough, p. 126 of the Transactions; but an incentive is there in the sense that the hourly earnings provided after April and May, 1949 were higher than Base Rate Earnings. However, Rygas is quite right in pointing out that the proper meaning of an incentive is that it should fluctuate with the effort of the people that work. p. 126 of Transactions.

The Company bases its case upon two considerations: that the rates established in April and May, 1949 to replace the suspended rates were proper and valid rates; and that these rates could not become inappropriate by the terms of the contract. pp. 48, 49 of Transactions. These contentions being true, according to the Company, then the question of retroactivity to April or May, 1949 cannot be entertained. Also p. 102 of Transactions.

As to Validity, the Company states, p. 42 of Transactions, that the rates established in April and May of 1949 became "valid rates in the light of the Union's agreement to such an installation", and further with the signing of the Agreement of December 1, 1950 "These wage payment rates continued to be valid rates in accordance with the provisions of Article V, section 1 of the . . . Agreement." Also pp. 58 and 90 of the Transactions.

As to inappropriateness, the Company states that the rates established (April and May, 1949) ". . . could never become inappropriate. . . because the wage payment rates provided that a fixed hourly payment equivalent to the previous occupational average earnings rate be paid. In view of this fact, it is evident that nothing could ever occur that would render such wage payment rates inappropriate. . . The wage payment rates have not become inappropriate. . . because regardless of what may occur, the very nature of the wage payment rates are such that the earnings resulting from these rates remain constant in all instances . . . and are not effected by changing conditions." pp. 65, 66 of Transactions. And, "The Company does not have to replace an existing fixed hourly wage payment rate with an incentive plan until such an incentive plan relating earnings to production performance is practicable in the opinion of the Company . . ." p. 79 of Transactions.

The Union states, pp. 8, 122 of Transactions, that no agreement was sought by the Company on the rates established in April and May, 1949; "It was a mere statement of fact. . ."; and ". . . this bonus was frozen prior to this meeting".

As to appropriateness, the Union states: ". . . we are requesting that they (the rates of April and May, 1949) apply an incentive plan back to the time that the old plan became inappropriate. The stop gap measure or business of the frozen rate was just that. It was a temporary arrangement until the rate could be developed. . . In every other case that I know of around here plans have been brought about to cover similar situations, have always become effective as of the date the change occurred . . . And if it becomes necessary I can produce all kinds of evidence to show that plans have been made retroactive to the date of the change even though they have been placed on average earnings for short periods." pp. 107, 111, 112 of Transactions.

Late in the hearing on February 1, 1954, the Union pointed out that other departments ". . . today have a rate considerably better than ours". And further, that ". . . the production figures and shipping figures. . . have increased 100 percent or more with the result that production jobs speeded up to this extent that we have a lot more maintenance that we had before, a lot more complicated equipment to deal with. . ." pp. 119, 120 of Transactions. These remarks are pertinent to an award made on January 11, 1954 and quoted by the Union as evidence in this arbitration. "The basic Union contention is that as a result of the changes that were made in the methods the crane operators are handling more steel with fewer man hours, contending that the men worked harder at a task which now requires more constant effort than before.". p. 131 of Transactions. The Arbitrator continues, p. 134 of Transactions, by calling attention to the four criteria mentioned in Article V, Section 5 of the Agreement.

In the Award by this Arbitrator on grievance 15-D-28, it was stated, p. 13 that identical issues settled by past awards should be determinative in current grievance.

The interim period between the letter of stipulation dated December 1, 1953, and the Hearing of February 1, 1954

On January 28, 1954, a meeting was held, p. 44 of Transactions, to settle the issues in this dispute, and thus avoid this Arbitration. ". . .the Company gave the Union representatives a full and detailed explanation. . . of the proposed plans. . . also offered to be of any possible assistance to the Union in explaining and helping the aggrieved maintenance personnel . . . to fully understand the provisions of the proposed wage incentive plans." p. 45 of Transactions. "We now feel that those plans (presented 1/28/ 54) that are operating on the direct units are in a light that we can predict pretty reasonably where we stand." p. 83 of Transactions. The Company, however, contends that these plans-Union Exhibits 8 and 9-". . . actually may be in a very technical sense have no part in this particular Arbitration here today. The question before the Arbitrator is the question that is included in the stipulation letter addressed to the Arbitrator . . ." p. 94 of Transactions.

The Union agrees that the Company did present "some rates" on Thursday, January 28, 1954. p. 12 of Transactions. However, the Union states that retroactivity (effective date April and May, 1949) was refused. p. 12 of Transactions, and that they were not presented in terms of the contractual requirements. p. 29 of Transactions. (This refers to p. 10 of the contract of 1952 or pp. 9, 10 of the 1947 contract). Further, the Union states that: ". . . I don't know whether these things that were presented. . . would be the answer to the incentive problem there". p. 113 of Transactions. Furthermore, there was not time to permit

the Union to evaluate the rates, for ". . . we have sat up nights sinxe the time it was given to us trying to figure out how it is possible. . . to figure out what is coming to them in accordance with this rate". p. 120 of Transactions.

ARBITRATOR'S APPRAISAL OF THE FACTS

(As they apply to these Grievances)

Because of the issues involved, and the sincerity of the Union in presenting its case, this Arbitrator felt it necessary to be especially careful in the statements of fact and contention even though some repetition may be involved in outlining the positions of the parties and in the section of the award devoted to "The Facts". Actually and in essence, the case seems to boil down to the question of whether rates to be installed on the maintenance occupations involved in these Grievances shall be made retroactive (effective date) to April and May of 1949.

Historical background

Incentive rates on the maintenance jobs involved were suspended in April and May, 1949, and the rates established to replace them preserved the level of incentive earnings enjoyed for three months prior to the suspension.

This arrangement is recognized on page 11 (pages 10 and 11 of the 1947 contract) of the 1952 contract.

The Modernization program

Both parties agree as to the existance of this program following War II. The Company's position is that the turmoil and absence of standard conditions prevented the development of incentive plans until some time just prior to January 28, 1954. The Union contends that the period was longer than necessary, and that the Company was stalling on its obligations.

This Arbitrator offers these observations: The determination of incentive rates for maintenance work is the most difficult of all incentive applications to make; and Article V, section 5 allows the Company leeway as to the timing of incentive introductions. The precise terminology of this leeway, page 9 of the contract, is ". . . whenever practicable in the opinion of the Company".

Some modicum of good faith on the part of the Company would surely be granted by the Union else relations could not be carried on at all; and, while the period seems long many things are involved. The Company is surely aware that ". . . a guy doesn't give a care". p. 126 of Transactions, when an incentive does not vary; and therefore likely to exert effort to create a situation in which workers will be encouraged to produce. Of course, the Company is now offering a new incentive plan as will be mentioned later.

The Validity Contention

The argument in this case runs in this manner: the payment of average earnings is recognized in the contract; changed conditions permit the Company leeway as to when incentive rates, in its judgment, may be introduced; and, during the operation of the plans replacing those suspended in April and May, 1949, an agreement was signed December 1, 1950 stating that all plans in effect as of November 30, 1950 are to remain in effect.

There was difference of opinion as to whether there was "agreement" on the installation of these plans in April and May, 1949. This difference of opinion does not seem material

since, to this Arbitrator, the contract contains authority for it as noted above under the heading "Historical background", and on that basis alone the rates may be considered valid. If the rates are valid, they do not become inappropriate since the earnings are not affected by changing conditions of the work; and the contract grants to the Company permissive judgment as to when conditions are appropriate for the introductions of plans relating earnings to performance.

The wage rate inequity issue

There seems some confusion on this issue. The Union claimed violation of section 6 of this agreement in the first step statement of these grievances, and in the hearing stated that the Company-in its third step answers-had no right to claim that the "frozen" rates were established under section 6. It was pointed out in the detailed discussion of this topic that the third step answers referred to the suspended rates, not the "frozen" rates.

The section 6 issue in the Union's issue, the Company calls attention to the fact that "Cost Bonus Plans" have been eliminated - with which the Union agrees - and that, therefore, the Company could not be in violation of it.

In the first paragraph of "limit 4" of section 6 occurs the phrase ". . . or Tonnage Bonus Plans" the agreement of October 29, 1947 does provide for the elimination of "Cost Bonus Plans", provides a floor of "plus 5 percent", and further provides that if earnings above the "plus 5 percent" are earned such will be paid.

It does not seem to this Arbitrator that this wage rate inequity issue has any material bearing on these grievances, and what bearing it may have is adequately answered by the Company.

The Retroactive (effective) date issue

It is not the intention here to repeat any if the detailed consideration given to this topic under the general heading "The Facts".

Since this is the core of this case, this Arbitrator has devoted a great deal of attention to the terms of the contract pertaining to it, to the implications of the award of January 11, 1954 as quoted by the Union, p. 131, and to his own remarks on page 13 of the award on Grievance 15-D-28.

To this Arbitrator, the award of January 11, 1954 does not apply to the conditions of this case nor to the claims of the Union in this case. In that award the four criteria of equitability, page 10 of the Agreement, are quoted in relation to the job content of crane operators. Like matters were not in issue in these grievances; and, therefore, the award of January 11 seems to have no value as a precedent. The Union's case was built upon three things: the grievances are legitimate (that is the Union had a right to file them); there should be an incentive plan; and such plan, or plans, should be retroactive to April and May, 1949. It is true that mention was made late in the hearing - pp. 119, 120 - that more maintenance work had to be done; but this is not in issue, was not mentioned in the statement of the grievances, nor in the letter of stipulation of December 1, 1953. Moreover, the size of the crew is pertinent to the question of "more maintenance work to do."

The contract, p. 34, plainly says that grievances may or may not be retroactive as the equities of particular cases may demand, but if an Arbitrator does determine that the award should be retroactive, the retroactive date is definitely prescribed. In cases involving rates of pay section 6 of Article V governs. As pointed out in the detained discussion of

this topic under the general heading "The Facts," section 6 deals with job descriptions and classifications, neither of which is in issue in this Arbitration. In no place in section 6 of the contract are any of the three issues raised by the Union in these grievances mentioned.

This Arbitrator, therefore, rules that retroactivity to April and May, 1949 cannot be awarded, for by explicit terms of the contract, no such power is granted to him.

The interim period December 1, 1953 to February 1, 1954

Curiously enough, the Company - although in a half hearted way - thought the rates presented to the Union on January 28, 1954 "have no part in this arbitration". As a matter of fact, only the Union presented them as exhibits. They are, to this Arbitrator, evidence that the Company is not negligent in this matter and can now "predict pretty reasonably where we stand."

This Arbitrator does not consider that there was anything sinister in the Company's presentation on January 28, or in the timing of the presentation. The desire to avoid the considerable expense of an arbitration seems motivation enough. The Company did, according to the Union, refuse to make the plans effective as of April and May, 1949. This refusal, as explained above, seems to be according to the explicit terms of the contract.

It may well be that the members of the Union bargaining committee did not feel that there was enough time to fully understand the rates presented. A casual examination of the rates by this Arbitrator leads to sympathy for the Union point of view, for somewhat less than two working days intervened between January 28 and February 1. Again, perhaps the Industrial Engineer may be able to improve on his explanations: nothing is explained unless the person explained to understands.

Really however, these matters are not very significant: The Company has rates to present; and the contract, p. 10, is very explicit and very adequate in spelling out just how these rates are to be introduced. This Arbitrator suggests that the parties revert to, and be guided by the explicit terms of the contract.

THE AWARD

This Arbitrator rules that the Company is not in Violation of Article V, Section 5 of the Collective Bargaining Agreement of May 7, 1947 (December 1, 1950 Supplement and Revision) and/or Section 6 of the Wage Rate Inequity Agreement of June 30, 1947, when it denied the request of the subject grievances for the installation of "active" incentive plans for maintenance personnel in the Cold Strip and Tin Mill Departments.