

70113

ARBITRATION AWARD

In the Matter between

.....
INLAND STEEL COMPANY

Indiana Harbor Works
East Chicago, Indiana

and

UNITED STEELWORKERS OF AMERICA

LOCAL UNION 1010, C.I.O.
.....

Grievance No. 12-D-16

Introduction

This arbitration was heard at the Indiana Harbor Works of the Company. The entire proceedings was taken by Peter J. Klein, a Court Reporter, and transcribed. Both the Company and the Union presented briefs at the hearing to the Arbitrator. A Post Hearing Brief was submitted by Paul Dogan, the aggrieved, and Matthew P. Dogan, his attorney, requesting a new hearing on the ground that the aggrieved was not represented at the hearing by his counsel. This brief was not adopted by the Union.

There were present on behalf of the Company, the following:-

Mr. W. T. Hensey, Jr.,	Assistant Superintendent, Labor Relations Department
Mr. T. G. Cure,	Assistant Superintendent, Labor Relations Department
Mr. W. A. Dillon,	Divisional Supervisor, Labor Relations Department

There were present on behalf of the Union, the following:

Mr. Joseph B. Jeneske,	International Representative
Mr. Fred Gardner,	Vice Chairman, Grievance Committee
Mr. Paul Dogan,	The Aggrieved
Mr. William Gailles,	The Griever

The Arbitrator selected by the parties was Harry Abrahams.

Issue

Whether or not the Company was in violation of Article VII, Section 13 of the Collective Bargaining Agreement when it denied Grievance 12-D-16, filed January 8, 1953, contending that Paul Dogan, Check No. 4803, was not transferred by Management in January 1938 from the Hot Mill sequence to the Cold Roll sequence of the Sheet Mill Department.

Grievance #12-D-16, dated 1-8-53

Statement of Grievance:

"Paul Dogan, #4803, was transferred by Management from the hot mill sequence to the cold roll sequence in 1938. During the time of his being transferred, a new mill was added to the cold roll department, and Paul Dogan was asked by Management to take the job of Assistant Roller. In the meantime Paul Dogan lost sequence standing for the hot mill."

Relief Sought:

"Request that Paul Dogan be given all of his previous length of service credit for the purpose of promotion and demotion within the cold roll sequence."

Step 1 Answer

"This grievance contends that Paul Dogan, Check No. 4803, was transferred by management from the Hot Mill to the Cold Roll in 1938. He requests that he be given all of his previous length-of-service credit for purposes of promotion and demotion within the Cold Roll Sequence. Violation is claimed of Article VII, Section 13 of the Collective Bargaining Agreement.

"There is no basis, in fact or in record, for the employee's contention. In our opinion, there has been no violation of Article VII, Section 13 of the Agreement, and the grievance request is denied.

-S- Vernon E. Karhohs
Cold Roll Foreman
Sheet Mill Department"

Grievance No. 12-D-16

Second Step Reply

"In accord with the findings of the Foreman,
The grievance is denied."

Third Step Reply

The following is a copy of letter from Inland Steel Company dated February 5, 1953, addressed to Mr. J. B. Jeneske, Staff Representative, United Steelworkers of America, C.I.O., 1803 Broadway, East Chicago, Indiana, and signed by R. E. Hoover, Superintendent, Labor Relations:

"Re: Gr. #12-D-16, 1-8-53, Sheet Mill Department (Cold Roll)
Paul Dogan, Check No. 4803, requests he be given all of his previous length of service credit for the purpose of promotion and demotion within the Cold Roll Sequence. Violation is claimed of Article VII, Section 13 of the Collective Bargaining Agreement."

"Dear Sir:

"This grievance contends that Paul Dogan, #4803, was transferred by management from the Hot Mill sequence to the Cold Roll sequence of the Sheet Mill Department in 1938. Violation is claimed of Article VII, Section 13 of the Collective Bargaining Agreement. The employee requests that he be given all of his previous length of service credit for the purpose of promotion and demotion within the Cold Roll sequence.

"At the Third Step meeting, the Union presented a letter of agreement dated June 13, 1949 which agreed to the use of departmental dates as sequential dates. This agreement was made because the records were not available due to water damage. However, through the paymaster's records, sequential dates were established and posted. There was no objection by the Union or employees to the sequential dates as established. In view of the above, the agreement was no longer necessary nor applicable. Therefore, the sequential dates as established and applied are proper and correct.

"Article VII, Section 13 of the Collective Bargaining Agreement refers to transfers from one department to another which is not the fact in Dogan's case. The grievance request is denied.

"This constitutes a Third Step reply."

PERTINENT PROVISIONS OF JULY 30, 1952
COLLECTIVE BARGAINING CONTRACT

ARTICLE VII

Seniority

"The Company and the Union recognize that promotional opportunity, job security when decrease of forces takes place, and reinstatements after layoffs should merit consideration in proportion to length of continuous service. It is also recognized that efficient operation of the plant greatly depends on the ability of the individual on his particular job.

"Section 1. Definition of Seniority. Employees within the bargaining unit shall be given consideration in respect to promotional opportunity for positions not excluded from said unit, job security upon a decrease of forces, and preference upon reinstatement after lay-off, in accord with their seniority status relative to one another. "Seniority" as used herein shall include the following factors:

- (a) Length of continuous service as hereinafter defined;
- (b) Ability to perform the work; and
- (c) Physical fitness.

It is understood and agreed that where factors (b) and (c) are relatively equal, length of continuous service as hereinafter defined shall govern. In the evaluation of (b) and (c) Management shall be the judge; provided that this will not be used for purposes of discrimination against any member of the Union. If objection is raised to the Management's evaluation, and where personnel records have not established a differential in abilities of two employees, a reasonable trial period of not less than thirty (30) days shall be allowed the employee with the longest continuous service record as hereinafter provided.

"Section 3. Seniority Sequences. Within a reasonable time after the signing of this Agreement, but not later than ninety (90) days, the various jobs in the bargaining unit within each department shall be arranged by the Company into definite promotional sequences in accord with logical work relationships, supervisory groupings and geographic locations, and such sequences shall be set up in diagram form. It shall be a specific objective to establish such promotional sequences, insofar as possible, in such manner that each sequence step will provide opportunity for employees to become acquainted with and to prepare themselves for the requirements of the job above. The arrange of occupations within a promotional sequence shall be in ascending order of total average earnings on the jobs concerned, and any permanent change in such earnings shall be the basis of realignment of the jobs within the sequence. Where job earnings are approximately equal, the job generally regarded as most closely related to the next higher job shall be the higher in the sequence arrangement.

"The promotional sequence diagrams, together with a list of the employees in the sequence and their relative relationship therein, shall be given to the grievance committeeman for the department involved within said ninety (90) day period, and such grievance committeeman shall confer with the Company regarding any changes therein he deems necessary or desirable. The diagrams and lists proposed by the Company shall be posted upon the bulletin boards in the department involved. Such diagrams and lists shall take effect at the time of posting, subject to being revised under the grievance procedure of Article VIII hereof, beginning with Step 2.

"The diagram lists of employee relationships shall be posted and shall be kept up-to-date by the departmental management. Where a permanent change in the relationship of jobs in a sequence takes place or new jobs are installed, the sequence diagrams and lists referred to in this Section shall be revised under the principles set forth above."

"Section 4. Sequential Length of Service. Employees shall be regarded as having established continuous length of service within a sequence after thirty (30) turns worked therein on other than fill-in turns for other employees, at which time the date of establishment shall go back to the start of the thirty (30) turns. Continuous length of service standing of employees within a sequence shall be in accord with the respective dates upon which they become established in that sequence, except as such standing is altered or modified by the provisions of the other sections of this Article.

"No employee shall hold continuous length of service standing in more than one (1) sequence at one time, and an employee leaving one sequence to enter another shall lose his continuous length of service standing in the sequence from which he transfers after thirty (30) turns worked in the new sequence.

"Section 5. Departmental Length of Service. Jobs in the labor pool and in single job promotional sequences (considered together as a unit) shall, in each department, be governed by the departmental length of service, but employees in a single job promotional sequence shall not be displaced by employees in the labor pool having longer continuous length of service, unless there are employees in the labor pool with longer length of continuous service in the department who are subject to being laid off, in which cases such employees shall be entitled to move into the single job promotional sequences in accordance with the provisions of this Article. In the labor pool and in the single job promotional sequences, the employees' continuous length of service standing shall be in accord with the respective dates on which they were last employed in the department, except if altered or modified by other provisions of this Article.

"Employees who have been in a sequence and are stepped back to the labor pool under the provisions of this Article shall be entitled to jobs in the department labor pool in accordance with their departmental continuous length of service and they shall be recalled to their sequence, when needed, in accord with their sequential seniority.

"Section 9. Layoffs'- Force and Crew Reductions Due to Lack of Business. When it becomes necessary to lay off employees because of decreased business activity, the following procedure shall be followed, unless otherwise mutually agreed between the Company and the Union:

"A. Sequential Jobs:

- "(3) Should there be further decrease in force, employees will be laid off according to the seniority status as defined in the following paragraphs of this Section in order to maintain the thirty-two (32) hour week.

Employees will be demoted in the reverse order of the promotional sequence in accordance with factors (a), (b) and (c) defined in Section 1 of this Article. Where factors (b) and (c) are relatively equal, continuous service in the department shall govern. No question may be raised with respect to factor (b), "Ability to perform the work," where the employee has held and performed the duties of an occupation for six (6) months or more."

"Section 10. Plant-wide Length of Service Credit. Continuous service consideration in regard to vacations, reserve labor status, severance allowance, and other plant-wide questions will be governed by the length of continuous service since the employee's last hiring date with the Company."

"Section 13. Transfers. An employee desiring to transfer to a department in the plant other than the one in which he is employed shall, if transferred, retain his seniority in the department from which he transferred for a period of thirty (30) turns worked. At the end of this period, he shall commence to establish a departmental service record in the new department as of his first working day therein.

"Employees transferred by management or employees desiring to transfer in order to fill a vacancy or a new occupation which cannot be filled from the department, in accordance with this Article VII, Section 1, shall, if so transferred, carry with them all of their previous length of service credit for the purpose of promotions and demotions within the new department. Written records of all such transfers shall be maintained within the new department."

ARTICLE XIV

General Provisions

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"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."

"Section 7. Prior Agreements. This Agreement shall supersede all previous agreements (written or oral) at the Company's plants covered hereby which are inconsistent herewith, including the May 7, 1947, Collective Bargaining Agreement and the agreements supplemental thereto other than (1) the Supplemental Agreement of November 11, 1949, concerning pensions and insurance, and (2) the Wage Rate Inequity Agreements of June 30, 1947, and August 4, 1949. Notwithstanding the provisions of the Supplemental Agreement of November 11, 1949, concerning pensions and insurance, the Company agrees that it will continue the provisions of said Supplemental Agreement in effect, without modification or change, until October 31, 1954, and said Supplemental Agreement is hereby amended in accordance with the provisions of this Section 7."

Background of Dispute and Discussion

Paul Dogan, the aggrieved employee, started working in the Hot Roll of the Sheet Mill Department of the Company in 1921 as a Pair Heater where he continued for a little over two years. Then he was advanced or promoted to the job of Heater in the Sheet Mill where he remained for about 14 years. This brings matters up to November of 1937. During the Year 1937-1938, a modernization took place which resulted in the reduction of the work force from 550 to 48, and in Dogan's being demoted from a Heating job to a Charger job. He held the Charger job for a few months. He was then advanced or promoted to the Cold Roll in the Sheet Mill Department and given the job of Assistant Roller which he held for about 8 months from January 1938 to September 1938. Thereafter, he was again advanced or promoted to the job of Roller in the Cold Roll. This latter job he held until February of 1943.

In 1943 the Sheet Mill Department was shut down. Dogan then was transferred to the job of watchman in the Police Department where he remained until August 7, 1944. He was then transferred to the job of Finishing End Labor in the 44" Finishing End Department where he worked for a little less than two weeks at which time he was transferred back to the job of Watchman in the Police Department. He remained a Watchman from August 22, 1944 to November 27, 1945. Thereafter, he was transferred to the job of Assistant Roller in the Cold Rolls of the Sheet Mill Department, and promoted to the job of Roller in 1946. He held the said job of Roller until January 11, 1953. Due to a reduction in force, Dogan was demoted to the job of Piler on January 12, 1953. When it became definite that Dogan would be so demoted, the grievance involved was filed. Due to the fact that Dogan was physically unable to handle this job, he was transferred on the same day to the job of Helper in the Machine Shop Department. On February 25, 1953, Dogan was transferred to the Labor Pool in the Sheet Metal Department, and on September 17, 1953, he was promoted to the job of Cold Roll Provider in the Sheet Metal Department. The job of Cold Roll Provider is the lowest job in the Cold Roll Sequence. The job of Roller is the top job in the Cold Roll Sequence.

Dogan's request, that he be given all of his previous length of service credit, from 1921 in the Sheet Mill Department for the purpose of promotion and demotion within the Cold Roll Sequence instead of 1938, created this grievance.

The first Collective Bargaining Agreement between the Company and the Union was dated August 5, 1942. Seniority under that contract was on a departmental basis as to promotions and demotions. The factors considered as to seniority were: (a) length of continuous service (b) ability to perform the work (c) physical fitness. Where factors (b) and (c) were relatively equal, length of continuous service governed. The 1945 contract contained practically the same seniority provisions.

The 1947 contract changed the seniority provisions from departmental to sequential with the seniority factors remaining the same. The same seniority provisions were carried in all subsequent contracts including the contract of July 30, 1952.

Paul Dogan, the aggrieved, was first employed by the Company in 1921 and had the job of Pair Heater in the Hot Roll of the Sheet Mill Department. The first Collective Bargaining Agreement between the Company and the Union was dated August 5, 1942, and by virtue of that Agreement, the employees that came under said contract were given certain seniority rights. Prior to the contract, the employees had only such seniority standing as the Company desired at will to grant to them. The 1942 Agreement did not give straight seniority to the employees under the contract, but designated modified seniority as to promotion or increase or decrease of forces based upon the following factors: (a) Length of continuous service; (b) Ability to perform the work; (c) Physical fitness.

It was agreed where factors B & C are relatively equal, length of continuous service shall govern. It is further designated in that Agreement under Article VII, Section 2, that:

"The application of seniority in promotions, increases or decreases of force, shall be strictly on a departmental basis. Plant seniority shall apply only on those subjects which pertain to all employees alike, namely, vacations, reserve labor status, etc."

Seniority as to promotions, increases or decreases of force was based strictly on a departmental basis.

Demotions under Section 10 of the same Article were to take place in the reverse order that their promotions took place.

Section 10 reads as follows:

"In cases of demotion, employees shall drop back in status of occupation in the same order that their promotions took place. Employees demoted because of lack of business or reduction of forces or other causes will be demoted in the reverse order of promotional sequence provided their term of service in this promotional line exceeds that of the subordinate employee whom he is to displace."

Under Section 12 of the same Article, it was set out that a promotional sequence diagram was to be established, and that when such was worked out and agreed upon by the Company and the Union, that it would serve as the definite promotional sequence which would be adhered to. That section further recognized that such a diagram would require considerable time to work out.

In the May 7, 1947 contract, seniority sequences were specifically provided for in accordance with the policy recognized in the 1942 Agreement. Seniority sequences have been provided for in all the Collective Bargaining Agreements since 1947 as set out in the July 30, 1952 Agreement.

In accordance with the said Agreements dealing with seniority sequence, the Company on May 5, 1950 posted the Cold Roll sequence in the Sheet Mill Department which set out that Dogan was a Roller in that department, and had seniority in that sequence from January, 1938. On April 4, 1951, a similar schedule was posted by the Company setting forth the same details as to Dogan.

Thereafter, on September 30, 1951, Dogan sent a letter to Mr. Pietch, Superintendent of Sheet Mill, Inland Steel Company; also the Grievance Committee Local 1010, CIO, wherein he complained that his seniority would commence as of 1921 instead of 1938. That letter reads as follows:

"Notice has been posted on the bulletin board that I have been demoted from Cold Roll Roller to the job of feeder on the cold roll. This action has apparently been taken because my full amount of seniority has not been recognized.

"I started working in the sheet mill in 1921 and worked on the hot mill until 1938. In 1938, I was supposed to have been promoted from charger to assistant hot mill roller. If this had been done, I would now be a roller on the hot mill. Instead, the management promoted me to assistant roller on the cold roll even though I wanted to stay on the hot mill roll. Instead, the management promoted me to assistant roller on the cold roll even though I wanted to stay on the hot mill roll. In 1946, I was promoted to roller on the cold roll, which position I now hold.

"Because of my uninterrupted 30 years' work in the sheet mill doing the jobs assigned to me by management, I feel that I am entitled on a basis of length of service to retain my present job as roller on the cold roll. It took 17 years of hard work in this department to get the job of roller, and I do not feel that it should be taken away from me now. Because of my age, I cannot start over at hard physical labor to work into a higher job.

"Will you please advise at your earliest convenience what your action will be on this matter.

Very truly yours,

Paul Dogan,
Check #4803."

Thereafter, on November 1, 1951, the Company again posted its Cold Roll sequence in the Sheet Mill Department and set forth that Dogan in the job of Roller had seniority in that sequence from January, 1938. Dogan was demoted on the basis of his 1938 sequential seniority as posted in January of 1953 due to reduction of force which gave rise to the grievance filed herein and this arbitration.

Under the Cold Roll sequence posted, there were 9 employees that had greater sequential seniority than Dogan. The real question involved in this arbitration is whether Dogan's Cold Roll sequence seniority should go back to 1921, when he was first hired in the Sheet Mill Department, in a Hot Roll job; or back to 1938, when he was given the job as Assistant Roller in Cold Roll of the Sheet Mill Department.

The Union cited a Memorandum of Agreement dated June 13, 1949 which read as follows:

"MEMORANDUM OF MEETING

TOPIC: Establishment of Seniority Dates for Sheet Mill
and Galvanizing Departments.

TIME &
PLACE: 10:00 a.m., June 4, 1949, the office of H. W. Bradley

<u>PRESENT:</u>	<u>For the Company</u>	<u>For the Union</u>
	H. W. Bradley	O. H. McKinsey
	J. G. Rothfuss	F. Gardner
	R. B. Gustafson	

SUMMARY: This meeting was called in an effort to decide upon a satisfactory date to be used as a basis for determining the sequential seniority dates of employees within the Sheet Mill and Galvanizing Departments. Since the records were destroyed which contained the dates individual employees were assigned to their jobs, it was agreed that the most equitable solution was to use the date an employee entered the department as his sequential seniority date. Therefore, the date each employee entered his department will become his sequential date for the purpose of promotions and demotions, in accordance with Article VII of the Collective Bargaining Agreement. This method of determining sequential seniority dates is applicable only for this situation. Subsequent to the date of this agreement, sequential seniority will be determined in accordance with Article VII of the Collective Bargaining Agreement.

/s/ H. W. Bradley
H. W. Bradley, Superintendent
Sheet Mill & Galvanizing Departments

/s/ Fred A. Gardner
Fred Gardner, Grievance Committeeman"

It should be here noted that the agreement was applicable only to the situation created by the destruction of necessary records, and that subsequent to the date of said agreement that sequential seniority would be determined in accordance with the contract.

The Union then contended, among other things, that in 1938 when Dogan took the job of Assistant Roller, he was transferred to that job by management, and that under all of the contracts, when an employee is transferred by management from one department to another, that employee carries with him his previous length of service credit for the purpose of promotions and demotions within the new Department.

The Company, among other things, contended that in 1938, there was no Collective Bargaining Agreement between the parties, and that seniority as such was not recognized and that Dogan was promoted at his request and transferred accordingly from the Hot Roll to the Cold Roll, both of which were within the Sheet Mill Department; and that the transfers referred to by the Union, under the contracts, apply to transfers between departments and not between different sequences within the same Department, and that Dogan had the least amount of sequential seniority among the Rollers in the Cold Roll on January 12, 1953 when a force reduction occurred.

All of the numerous contentions made by both the Company and the Union in the record and briefs were fully taken into consideration by the Arbitrator.

The question of seniority rights is one that has not been clearly understood by many. Many people feel that seniority means straight seniority based only upon continuity of service. That is true in the railroads, but in industrial plants it is not true. There, generally, it is a modified seniority based upon several designated factors. In industrial plants there are many forms of modified seniority. It can be based upon a combination of occupational, departmental, divisional, plant-wide, and seniority based upon the sex of the employee, and upon other considerations such as sequential seniority.

In the case involved, there was originally under the 1942 contract, a modified departmental seniority based upon: (a) length of continuous service; (b) ability to perform the work; (c) physical fitness; and it was only where ability to perform the work and physical fitness were respectively equal that the length of continuous service governed with reference to promotions, or increase or decrease of forces. As before stated, plant-wide seniority applied only upon those subjects which pertained to all employees alike; namely, vacations, reserve labor status, etc. This in general was carried out in the 1952 Agreement.

Parties (that is the Company and the Union) that created the seniority provisions of the contract can also modify and change the seniority provisions by future agreements. Accordingly, in line with the policy set forth in the 1942 agreement, sequential seniority was first provided for in the 1947 Agreement and has continued since that time. This was done by the parties in good faith. It was not arbitrary and was not directed at Dogan. Dogan's seniority must therefore be determined under the July 30, 1952 contract which was the last contract entered into between the Company and the Union.

In book, "How To Handle Problems of Seniority", published by National Foremen's Institute, Inc., on page 203, under the sub-title "Vacating or Amending Seniority Rights", the following was set out:

"The only source of seniority rights which the courts have recognized is found in the collective contract between an employer and a union representing employees. It follows that if the source is in a contract, the rights may be enlarged, diminished or abolished by a change in the contract upon which they are based. It cannot be argued that once having been established by an agreement, seniority rights cannot be taken away by an amendment of the agreement.

"Seniority rights may be amended by the employer and the union without obtaining the consent of the individual employees, and even without consulting them. The objections of individual employees are not barriers."

The above issue which was set out in the Submission Agreement dated February 18, 1954, signed by the Company and the Union is based on Article VII, Section 13 of the 1952 Agreement which deals with transfers between departments.

The Union therefore contended that Dogan was transferred by management in 1938 from the Hot Roll to the Cold Roll and that therefore he should have seniority credit from 1921 for the purpose of promotions and demotions within the new department. The Hot Roll and the Cold Roll are both jobs within the same department; that is, the Sheet Mill Department. The transfer from the Hot Roll to the Cold Roll was not a transfer between departments, but was a transfer between sequences. Article VII, Section 13 of the 1952 Agreement is therefore not applicable.

Departmental seniority under the said contract, among other things, applied to jobs in the labor pool and in single job promotional sequences as set forth in Section 5 and Section 9 B (1) of said Article VII of the 1952 contract, and to sequential jobs when the hours of work within a sequence is reduced to 32 hours a week as set forth in Section 9 A of Article VII of said contract. These situations, however, do not apply to the present issue involved.

The Hot Roll and the Cold Roll in the Sheet Mill Department had separate sequential seniority lists. Sequential length of service is set forth in Section 4 of said Article VII of the 1952 contract, as follows:

"Employees shall be regarded as having established continuous length of service within a sequence after thirty (30) turns worked therein on other than fill-in turns for other employees, at which time the date of establishment shall go back to the start of the thirty (30) turns. Continuous length of service standing of employees within a sequence shall be in accord with the respective dates upon which they become established in that sequence, except as such standing is altered or modified by the provisions of the other sections of this Article."

"*****"

That section further states that an employee leaving one sequence to enter another sequence shall lose his seniority in the sequence from which he transfers after working 30 turns in the new sequence.

Length of continuous service, as one of the factors in seniority, goes back beyond the date of the Collective Bargaining Agreement, which brings the employment record of all employees up to the date of the contract, so that from the date of the contract on, the seniority provisions of the respective contracts can be properly applied.

Dogan started as an employee in the Cold Roll of the Sheet Mill as an Assistant Roller in January 1938, and became a Roller therein on September, 1938. Prior to this he had worked in the Hot Roll job. His sequential seniority, giving effect to the July 30, 1952 contract, therefore commenced as of January, 1938 in the Cold Roll sequence.

The Post Hearing Brief filed by Dogan and his attorney, not having been accepted or adopted by the Union, was not considered as part of this arbitration.

A W A R D

The Company was not in violation of Article VII, Section 13, of the July 30, 1952 Collective Bargaining Agreement when it denied the said Grievance 12-D-16 of the Union dated January 8, 1953.

/s/ Harry Abrahams
Arbitrator

Dated July 30, 1954.