

AWARD OF THE ARBITRATOR

70122

IN THE MATTER OF)
INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA,)
C.I.O., LOCAL UNION NO. 1010)

Heard November 30, 1954, at
Indiana Harbor, Indiana

Grievance No. 12-D-64

Appearance for the Company:

Mr. W. T. Hensey, Jr.
Ass't. Sup't. of Labor Relations

Mr. W. A. Dillon
Divisional Supervisor of Labor Relations

Appearances for the Union:

Mr. Cecil Clifton
Staff Representative

Mr. Fred A. Gardner,
Chairman, Grievance Committee

Mr. John Sargent,
Secretary

Mr. W. H. Gailes,
Griever

Mr. J. Lara
Aggrieved

Before:

Sydney W. Hollander, Arbitrator, appointed
by agreement of the parties.

On November 17, 1954 in response to a joint request by the parties hereto, dated November 11, 1954, the undersigned accepted an appointment as arbitrator to hear a dispute identified as "Grievance #12-D-64" and to render an award in said matter.

Following said appointment and acceptance, which was made in accordance with Section 2 of Article 8 of the Company-Union Contract in force, the undersigned presided at a hearing held at the Company's Indiana Harbor office on November 30, 1954 at the hour of 10:00 A.M. The aforementioned representatives of the parties appeared and tendered the following evidence:

The Issue

The issue as stipulated in the letter of submission to the arbitrator dated November 11, 1954 is as follows:

" The question to be decided by the Arbitrator is whether or not the company was in violation of Article VII, Section 6 of the July 30, 1952 Collective Bargaining Agreement when it denied Grievance 12-D-64 filed April 14, 1954, which contended that J. Lara, Check No. 4492 was improperly denied promotion."

Facts and Findings

J. Lara, Check #4492 was hired in the Galvanize Department on October 11, 1948. He entered the Armed Services during the early part of 1951 and returned to Inland Steel Company on March 18, 1953 and was re-instated to the Galvanize Department under the provisions of Article XIII, Section 1 of the Company-Union Contract. He was rehired to the same occupation and sequence in which he was established at the time of his termination to enter the Armed Services.

On April 4, 1953 Lara submitted an application for entrance to the Continuous Galvanize Line Sequence (Company Ex. "B"). Not possessing the basic minimum qualifications he was denied entrance into this sequence by the Company. Lara then made application for a Hooking job in the Shipping Sequence. It was accepted and he was assigned work as a Shipping Handyman which job is at the bottom of the Shipping Sequence (Company Ex. "C"). This took place on June 10, 1953. After a training period he was promoted to Loading Dock Hooker on June 16, 1953. Again after a training period he was promoted to a Hooker job on June 22, 1953. This job was next higher in sequence. On August 5, 1953 he was offered a job as Bundler Helper, which was two steps higher in sequence than the job he was in. Not wanting the job offered he waived promotion on August 5, 1953 on the ground that the "work is too hard." The waiver (Company Ex. "D") was filed in accordance with Article VII, Section 6, Sub-paragraph (b), which states as follows:

" Permanent vacancies in jobs more than one step above the labor pool shall be filled by the employee within the sequence who is entitled to the job under the provisions of this Article, except that no employee shall move into a higher job without first having performed the immediately subordinate job, unless another employee entitled to the higher job makes this impossible by waiving promotion.

(b) Waiver of Promotions. An employee may waive promotion by signifying such intention to his supervisor or shall be considered as waiving if he fails to step up to fill a vacancy. Such waivers shall be noted in the personnel records and confirmed by the Company in writing. Employees may withdraw their waiver or announce their intention to fill future vacancies (which the Company shall also note in personnel records and confirm in writing), following which they shall again become eligible for promotion, but an employee who has so waived promotion and later withdraws it as herewith provided shall not be permitted to challenge the future higher sequential standing of those who have stepped ahead of him as the result of such waiver, until he has reached the same job level above (by filling a permanent opening) as those who have stepped ahead of him, at which time his waiver shall be considered as having no further force and effect.

" Employees may not enter and withdraw waivers indiscriminately and without good and valid reason.

" This sub-paragraph (b) shall not apply to alter existing practices in the Transportation Department."

The Company contends that an employee waiving a promotion waives all promotion and not a specific job (Brief page 7). This contention may have some merit when a man is offered a promotion that steps him up to the next rung in the ladder. In the instant case, however, we are faced with somewhat unusual circumstances, a case in which an employee is training for a job that requires approximately two months of training is offered a position two grades above the one he is holding, without any training whatsoever. The employee, upon checking the job, finds that he has not the ability to perform and waives promotion. By doing this he has placed himself in a position where he is ineligible to receive the job he has been training for and toward which he has been striving. This appears to have a slight tinge of unfairness about it.

The union, on the other hand, contends that the employee did not waive the promotion to the next higher job in the sequence but waived a specific job and thereby did not waive promotion to a job he was training for and which was one step above him in the sequence.

An examination of the facts in this matter shows some extenuating circumstances and to base a decision upon an interpretation of Sub-paragraph (b) of Section 6, Article 7, alone, would not be fair.

Let us review the facts in this case. Lara, who the Company admits had seniority over one Corral, a Head Hooker, made application to go to the Shipping sequence with the understanding that he was to be trained for a job that his length of service would have permitted him to fill (Record Page 88). He was successfully performing these lower jobs in the sequence as could be seen by his promotions (Record Page 89). Shortly before the time he would have been sufficiently trained to take a Head Hooker job to which his sequential date entitled him (Page 98) he was offered a job 2 grades above his which he failed to fill on the ground that the work was too hard. He exercised a prerogative that is the Company's right by contract, namely to be the judge of a man's ability to perform the job. The company says that had they not offered the job to Lara he would have had a grievance. That certainly could have been remedied by the fact that the Company would have to first pass on Lara's ability, and if in the Company's opinion he did not have the ability he would not have had the grounds for a grievance.

But aside from that point I think we have an implied contract between the parties. Lara being entitled to a certain job and having declared his intention to work toward it and the Company recognizing his seniority says "we will train you, which we must do under the contract and when you are ready you will be promoted to Head Hooker." Before the promotion takes place, however, the promotion to Bundler Helper is offered and upon Lara's refusal to accept, the Company invokes the terms of its written contract by invoking Art. VII, Section 6 (b) and disregarded its implied contract. This, however, was evidently the result of somebody's negligence in not posting the correct seniority dates. An examination of the Shipping Sequence list (Co. Ex. "G") shows that others waived promotion on March 9, 1953. These were Brown, Corral and Hasten. It appears that the job in question was waived by two of the three men who had less seniority than Lara, although above Lara on the list. Then again one Goodman is listed as waiving promotion almost two months after Lara. The Company does not know what happened to Goodman during that time. The Union says he was on his job at all times. Why was he not the first one to be offered the promotion? If he was in another department as the Company surmised it must have been only a temporary assignment as he was carried on the Sequence list as a Head Hooker and was entitled to first crack at the promotion. The dates on the list were certainly confusing when they were posted on April 5, 1954 so it must have been more so on August 5, 1953, the date Lara waived and on which date no list had yet been posted. The Company admitted (Rec. P. 80)

that someone was remiss in his duty in not posting the list. There can be only one conclusion, therefore, and that is that Lara's waiver did not constitute a waiver of promotion as defined in Article VII, Section 6, Sub-paragraph (b) of the Company-Union Contract. In other words he was not the eligible employee at the time the promotion was offered and his waiver was given by mistake at the request of the Company.

The Union has asked for the difference in Lara's pay between his wage as a Hooker and the wage he would have earned as Head Hooker. The retroactive date requested by the Union is not clear. However from the testimony of the Company (Rec. P. 99) it appears that approximately six weeks to two months is required to train for Head Hooker from the Hooker job. This would have made Lara eligible for the Head Hooker job about August 23, 1953. To go back to this date, however, would condone the Union's failure to file a grievance regarding the Company's failure to post the seniority list or the grievance in regard to Lara's lack of eligibility for promotion until April 14, 1954. The undersigned there is of the opinion that April 14, 1954, is a fair retroactive date for any retroactive pay.

Award

It is awarded that J. Lara, Check No. 4492, was improperly denied promotion in violation of Article VII, Section 6, of the July 30, 1952 Collective Bargaining Agreement between the parties hereto and that:

J. Lara, Check No. 4492, is awarded the difference in pay between that of Hooker and Head Hooker for the period worked between April 14, 1954 and June 21, 1954.

SYDNEY W. HOLLANDER

/s/ Sydney M. Hollander
Arbitrator

Jan. 11, 1955