

In the Matter of Arbitration between

INLAND STEEL COMPANY
Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA, CIO,
LOCAL UNION NO. 1010

Arbitration No. #143
Application of Award of
Grievance No. 17-C-50

Herbert Blumer,
Arbitrator

January 25, 1956.

Pursuant to the authority vested in me by
the stipulation of the above parties, dated
November 16, 1955, and following a full Hearing
on the matter in dispute I award as follows:

A W A R D

The retroactive payments of \$1,660.78 to
Williams and \$1,887.18 to Goodus constitute
a proper application of the Award in
Grievance No. 17-C-50.

Herbert Blumer,
Arbitrator.

Q P I N I Q N

The Issue

The present dispute arises over the method to be employed in the computation of retroactive wages due D. Williams and P. Goodus under the Award made on Grievance No. 17-C-50. The Award provided for a retroactive pay period extending from February 27, 1950, to the date of applying the Award in April, 1954. In seeking to determine the amount of retroactive pay due each of these two employees the Company compared the earnings of Williams with those of J. Kuric, and the earnings of Goodus with those of R. Hammond. (Kuric had been improperly promoted over Williams, and Hammond improperly promoted over Goodus.)

The method used by the Company in comparing the earnings was to take the total earnings of each of the two given employees compared (for example, Williams and Kuric) for the retroactive pay period and adjust these earnings so as to take account of absent hours of work and of vacation periods. The difference between the adjusted total earnings (including adjusted vacations) constituted the amount of retroactive pay. For example, the adjusted earnings of Kuric during the retroactive period were \$34,368.15 and those of Williams were \$32,707.37; the difference of \$1660.78 constituted the amount of the retroactive wage payment made to Williams.

The sole issue in dispute refers to the manner of making the comparison of earnings. The Union contends that the amount of difference should have been reached by comparing the earnings of the two paired employees on a turn by turn basis, and by accumulating the differences found in this way. The Company declares, instead, that the method it used of comparing lump total earnings for the retroactive period was proper and correct.

Position of the Union

The method of comparing total earnings which the Company has used is not equitable since it makes no allowance for the significantly different number of turns worked by the employees who are being compared. The earnings of the employee who should have been promoted cover more hours worked than is true in the case of the other employee. Thus, in taking total earnings for comparison this employee is penalized for the greater number of hours which he has worked.

"If Williams, for example, worked six (6) days on the Single Stand Temper Mill and made Twenty Dollars (\$20.00) per day, he would make, with time and one-half for the sixth day, One Hundred and Thirty Dollars (\$130.00) for the week. On the other hand if Kuric worked five (5) days on #3 Temper Mill and made Twenty-five Dollars (\$25.00) per day, he would make One Hundred and Twenty-five Dollars (\$125.00) for the week. Therefore, under the method used by the Company, Williams would not have any retroactive pay coming. If the method suggested by the Union is used, Williams would have Five Dollars (\$5.00) per day or a total of Twenty-five Dollars (\$25.00) due him for the week."

The comparison should be made on the basis of scheduled turns and not on the basis of over-all total earnings. In the hypothetical case which has been mentioned there is no more valid reason, in making the comparison of earnings, to include Williams' earnings for the sixth day than to include earnings that he might have made working that day outside of the plant.

There is evidence that during a substantial part of the retroactive period Williams and Goodas worked six or seven turns a week while Kuric and Hammond were working only five turns a week. Thus, the comparison of the total earnings for the given pairs is not fair to Williams and Goodas in computing their retroactive pay. A comparison on the basis of scheduled turns is the proper basis.

The Union has not knowingly given assent to the method of computing retroactive pay which the Company says that it has customarily used. Indeed,

there seems to be no consistency in the Company's method; this seems to be shown by its apparent intention to use a turn by turn basis in a recent case.

Position of the Company

There are no contractual provisions to govern the determination of retroactive pay. The Company has been directed by the following considerations in applying the Award in Grievance No. 17-C-50.

(1) The Company has sought to make the grievants "whole" in accordance with the intent of the Arbitrator's decision. This it has done by determining the amount of earnings which Williams and Goodus would have had if they had been promoted in place of Kuric and Hammond. The difference between such calculated earnings and the actual earnings of Williams and Goodus is an equitable manner of ascertaining the wages they lost during the retroactive period as a result of not being promoted. It meets in a thoroughly reasonable way the intent of the Arbitrator's Award.

(2) The procedure used by the Company in this case is in complete conformity with its customary practice in determining retroactivity. The Company submits as its exhibit "C" a list of seventeen cases over the last few years in which it was required to pay retroactive wages. The method of computing back wages has been consistent in these cases--it is the method employed in the present case. This method has never been questioned by the Union prior to the instant case.

(3) Arbitration decisions on comparable cases sustain the procedure used by the Company in the present case. Several of these decisions emphasize that it is proper to follow customary practice in computing retroactive pay. This the Company has done. The cases also show the propriety of using a comparison of total earnings as the means of determining the retroactive payment. The Company presents citations of thirteen arbitration decisions which support the kind of action taken by the Company.

Discussion

There are a number of conditions in the present case that do not permit the clear and simple calculation of retroactive payment that is true in the usual case. The two employees, Williams and Goodus, as well as the two employees to whose places they should have been promoted, worked under a crew incentive wage plan. The four employees worked on separate crews. Further, Williams and Goodus worked on a separate and different mill from Kuric and Hammond. The average hourly earnings of these employees, based on incentive earnings, varied between them, and from pay period to pay period in the case of any one of them. These employees differed in the amount of overtime worked and in the opportunities for overtime. Further, the four employees showed different rates of absenteeism during the retroactive pay period. Such conditions as these make difficult the task of computing retroactive pay in the present case.

There are no clauses in the Agreement of the parties which govern the manner of calculating retroactive wage payments. Nor are there any established legal or quasi-legal regulations that are professionally recognized as applying to the type of retroactive wage problem represented herein. In comparable cases in industry there is considerable variation between the kinds of comparisons made to ascertain the amount of retroactive payment. Some use total earnings; some are confined solely to straight time earnings; some consider not merely earnings but available opportunities for earnings; and others may introduce factors of adjustment such as physical strength or occupational skill. No one of these procedures is intrinsically superior to the others. In the absence of any contractual provisions or generally accepted governing rules one must rely on principles of reasonableness and fairness. One must ask of the given method used to compute retroactivity, "Is it reasonable?" "Is it equitable?" "Is it understandable?" and "Is it applied consistently?" These are the criteria which this Arbitrator is using in the present case.

Reasonableness

This Arbitrator finds the principle underlying the Company's method to be reasonable. It assumes that the aggrieved employee is entitled to the earnings that he would have made had he actually been given the promotion which he deserved. His actual earnings on the lower position are offset against these earnings which it is assumed he would have made in the higher position. The sum needed to bring his actual earnings up to the earnings he would have made in the higher position constitutes the loss in monetary income which he sustained as a result of not being given the original promotion. The payment of this sum thus makes good the monetary harm which he suffered. One must recognize that this principle is a reasonable principle.

Fairness

The Union's primary criticism is that the method used by the Company is not equitable. In the opinion of this Arbitrator the method followed by the Company must be recognized as a just method of arriving at an equitable compensation. It makes the aggrieved employee whole by restoring to him any loss of earnings that he may have suffered.

One may grant the Union's contention that in given instances (as in the hypothetical case they cite) the actual earnings of the employee who is entitled to retroactivity may include extra earnings, such as overtime, that were not available on the higher job. Thus, in comparing total earnings such an employee would be deprived of the higher rate for the actual time he would have worked in the higher position. However, we must offset against this seeming loss the extra earnings he actually made in the lower position--earnings that he would not have been able to make had he been promoted originally. Under the Union's suggested scheme the employee would secure not only the better rate of the higher position but also these extra earnings of the lower position which he

would not have had if he had been promoted originally. This is to load the picture in his behalf by giving him not only the benefit of the higher rate but an extra benefit (in the form of premium wages) which does not belong at all to the higher position. The Company's method, while not yielding the employee in the hypothetical case exactly the higher rate for the actual turns that he would have worked, does not result in earnings less than those he would have received in the higher position. Certainly, one cannot regard this as being inequitable.

It should be noted further that the scheme of comparison proposed by the Union would introduce an inequity in the event that the higher position had the greater opportunities for extra earnings. To apply the Union's scheme in such a situation would mean that the aggrieved employee would suffer a real loss in earnings--earnings that he would have had if originally promoted. For, in accordance with the Union's scheme the aggrieved employee would be given only the benefit of the higher rate for the regularly scheduled turns; he would not have any claim to the extra or premium wages which the higher position would have yielded. Thus, under the Union's proposal he would not recover the full earnings that he would have made in the higher position. Under the Company's method the aggrieved employee would get in his retroactive payment the full measure of earnings that he would have made if originally promoted to the higher position. It seems to this Arbitrator that a method which takes account of the full earnings that would have been made on the higher position instead of only a part of such earnings is unquestionably an equitable procedure. The Company's method would protect the employee against a loss that would be inevitable under the Union's proposal, if the higher job provides for a greater measure of extra earnings.

Understandability

The method of comparison employed by the Company is open and understandable. It starts with the actual earnings of the person who was improperly promoted to the higher position. These actual earnings provide the basis for the calculation of the supposed earnings of the aggrieved employee in the higher position. In this calculation this employee is credited with earnings for the hours of absenteeism of the improperly promoted employee. Further, his vacation pay is calculated on the basis of the higher average earnings which it is assumed that he would have had in the higher position. This Arbitrator finds no ambiguity, no confusing character, and no "gimmicks" in the method followed by the Company.

Consistency

The Company asserts that the method of comparison of earnings used in the present case is applied consistently as a matter of customary practice. It submits a list of seventeen cases of retroactive payment in which it declares that this method was consistently used. These instances seem to bear out the Company's contention, although this Arbitrator has been in no position to examine the cases to see if they do. In the present dispute the same method of comparison was applied to the cases of both Williams and Goodus. There is nothing in the evidence to suggest that this method represents a deviation from the Company's usual procedure.

Inasmuch as the evidence indicates that the method used by the Company to compute the retroactive pay of Williams and Goodus was reasonable, equitable, understandable, and apparently consistent, this Arbitrator rules that the retroactive payments of \$1,660.78 to Williams and \$1,887.18 to Goodus constitute a proper application of the Award in Grievance No. 17-C-50.

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