Grievance No. 17-E-24
Appeal No. 129
Arbitration No. 151

INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Opinion and Award

Appearances:

For the Company:

William T. Hensey, Jr., Assistant Manager, Industrial Relations
William F. Price, Attorney of Vedder, Price and Kaufman
John I. Herlihy, Assistant Superintendent, Industrial Engineering
Louis E. Davidson, Assistant Superintendent, Labor Relations
William J. Walsh, Superintendent, Tin Plate Department

For the Union:

Cecil Clifton, International Staff Representative
Fred Gardner, Chairman Grievance Committee
Joseph Wolanin, Secretary Grievance Committee

The question presented in this case is whether Wage Incentive Plan, File 78-0212, applicable to the No. 1 Electrolytic Cleaning Line in the Tin Mill, provides equitable incentive earnings under the provisions of Article V, Section 5, of the Agreement of July 1, 1954. The relief requested in the grievance is to "revise rates in order to make them equitable with other incentive rates within the department."

The No. 1 Electrolytic Cleaning Line was installed and manned on December 13, 1954. To a substantial extent it replaced the existing Coil Washing Lines. The occupations on the new line are Operator, Welder Operator, and Feeder, for whom, after discussion with Union representatives, base rates were made effective on November 26, 1954 and Wage Incentive Plan File 78-0212 on December 6, 1954. From December 13, 1954 through January 23, 1955 the crew members were in training, and on January 24, 1955 established crews were on the job. The grievance protesting the Wage Incentive Plan was filed January 11, 1955 and re-filed on February 11, 1955.

Subsequently Management determined there were handling procedures for which payment was not provided in the plan and also that the operating speed should be reduced. Consequently, on October 4, 1956 the Company proposed a revision of the original plan, the part relating to the handling procedures to be effective as of December 6, 1954 and that relating to the reduced speed to be effective as of March 15, 1956, the date when the speed was reduced. This proposal was designated as Wage Incentive Plan File No. 78-0212, Revision No. 1. The Union rejected this, because Management offered it as a full settlement of this grievance, as well as a revision of the incentive plan because of the later developments or changes.

This is the first incentive case to be decided under the recently instituted permanent arbitratorship. Since this type of case predominates, the parties have submitted general briefs on this subject and have discussed for the guidance of the Permanent Arbitrator the history of the contract provisions now incorporated into Sections 4, 5, and 6 of Article V of their Agreement, those of the Wage Rate Inequity Agreement of June 30, 1947, and the several arbitration awards previously rendered by ad hoc, industrial engineer arbitrators.

The contract provisions furnish only general guides to the parties and the arbitrator for determining disputes over incentive plans. The tests to be applied are set forth in Section 5, sub-paragraph 4. If the affected employees claim that a new incentive installed by the Company does not provide equitable incentive earnings certain stipulated procedures are to be followed terminating in arbitration. Sub-paragraph 4 provides in part:

> "If the grievance be submitted to arbitration, the arbitrator shall decide the question of equitable earnings in relation to the other incentive earnings in the department or like department involved and the previous job requirements and the previous incentive earnings and the decision of the arbitrator shall be effective as of the date when the new incentive was put into effect."

This direction to the arbitrator is identical in language with the grounds set forth in the Agreement on which such employees may institute and prosecute incentive grievances, except for the inclusion there of a comma after the words "like department involved," immediately before the words "and the previous job requirements."

This history of these provisions, which originated in the present form in 1947, reveals some inconsistency in the positions advanced by the parties from time to time and in the arbitration awards interpreting or applying the provisions. This may explain the large number of grievances over incentive plans and the apparent inability of the parties to come to agreement over such plans. It is proposed that we move cautiously in this new continuing arbitration relationship, deciding only what needs to be decided on a case by case basis, but indicating the approaches or principles on which the parties are in, or hereafter come to, agreement. This should tend to promote consistency, narrow the areas of difference, and to introduce more certainty and predictability as to the respective rights and obligations.

It should be stated in this early case that I am quite aware of the restrictions on me as arbitrator in Section 2 of Article VIII of the 1954 Agreement, as well as in the current Agreement. I understand fully that my authority extends only to interpreting, applying or determining compliance with the Agreement, and that I have "no power to add to, detract from or alter in any way the provisions" of the Agreement. I intend to adhere as strictly as possible to this injunction.

In this case the Union asserted in its grievance that Wage Incentive Plan, File No. 78-0212, does not provide equitable incentive earnings for the crew on the No. 1 Electrolytic Cleaning Line in relation to other incentive earnings in the department. As the case was presented and met by Management in its third step answer and at the hearing, however, the relationship to previous incentive earnings and previous job requirements became an issue, together with the Union's added request that the crew members be given their average hourly earnings, rather than standard base rates, as incumbents of the job, until the new incentive is agreed upon or the arbitrator's decision is rendered. This the Union believes should be done by virtue of sub-paragraph 5, Section 5. Management opposes this latter request on the ground that these are new occupations, and not changed occupations, and that therefore sub-paragraph 5 does not apply.

On the other hand, Management agreed that the incentive earnings provided for the crew on the new cleaning line should be compared with the incentive earnings on the Coil Washing Line, even though we are considering a new job, as Management sees it, for the reason that this is the most comparable operation in the department. The Union agrees that the proper comparison is with the Coil Washing occupations, but for the reason that the present occupations represent merely changes from those performed on the Coil Washing Line, and not new occupations.

The expansion of the basis of the Union's grievance and of the request included in the grievance is entertainable because this expansion was evident in the third step of the grievance procedure.

Management's emphasis on its view that the No. 1 Electrolytic Cleaning Line constituted a new job, when related to the Coil Washing Line, must be examined in the light of the language of the Agreement. Sub-paragraph 5 provides as follows:

> "Until such time as the new incentive is agreed upon (or decided in arbitration) 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 earning received by such incumbent under the incentive plan in effect during the three (3) months immediately preceding the installation of the new incentive."

It will be seen that the quoted language makes no reference to new or replacement or changed jobs, but rather to the new incentive.

What is meant by a "new incentive"?

In the first paragraph of Section 5 we find this (with emphasis added):

> "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 under and by reason of the provisions of the Wage Rate Inequity Agreement of June 30, 1947."

Immediately following this, the Agreement states:

> "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, subject to the provisions of the aforesaid Wage Rate Inequity Agreement. Such new incentives shall be established in accordance with the following procedure:
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> 1. The Company will develop the proposed new incentive."

In the following sub-paragraphs there is repeated mention of "the new incentive," "the proposed new incentive," or "such new incentive," culminating in the above-quoted provisions of sub-paragraph 5 by which average hourly earnings of incumbents are to be maintained until the incentive is agreed upon or ruled on in arbitration.

No distinction is made in the Agreement in this respect between new incentives whether predicated on new jobs, on jobs which have inappropriate incentives, or on the fact that there are new or changed conditions because of mechanical improvements, changes in equipment, processes or methods. The latter category is broadly identified in Section 5 (marginal paragraph 36) of the 1954 Agreement and appears to cover the kind of change made when the Company installed the No. 1 Electrolytic Cleaning Line to perform by an improved method the cleaning process formerly done on the Coil Washing Line.

It is hoped that the foregoing analysis of the contract provisions will serve as a helpful background for a more thorough consideration of this problem of maintaining average hourly earnings while there is an unresolved question over the equitableness of a new incentive. At the hearing and in the briefs submitted there were suggestions that a practice may have developed in the administration of the Agreement on this subject. This, however, was not made clear. The discussions at the hearing were largely directed to the problem of incentive earnings. I find that I need the benefit of more discussion of the maintenance of earnings issue, before I rule on it. I propose to have such a discussion with the parties at the opening of the next week of hearings. If there is a practice it should be fully described, together with the contractual basis on which it has been developed. Accordingly, the decision on this maintenance of average hourly earnings issue will be reserved and made promptly after the discussion above referred to.

We now come to question whether Wage Incentive Plan, File No. 78-0212, provides equitable incentive earnings as tested by the provisions of sub-paragraph 4 of Section 5. The Agreement speaks of "equitable incentive earnings." In its presentation at the hearing, and in its brief, Management

repeatedly used the expression "earnings opportunity under the wage incentive plan." In any reasonable inquiry as to whether equitable incentive earnings are provided by an incentive plan, the question must be whether, other things being equal, the plan provides the indicated kind of earnings opportunity. Surely, in an incentive program, the employees could not deliberately withhold normal effort and then claim their earnings are insufficient to be deemed equitable. Judging by the discussion at the hearing, the parties seem to be entirely in accord as to this.

It is not necessary to decide in this case whether there is an order of priority or of exclusiveness to any of the criteria set forth in sub-paragraph 4. The parties agreed there is no "like department," that the comparison should be largely confined in this case to the Coil Washing Line occupations. The Union deemed this appropriate under "the previous incentive earnings" test, while the Company relied on the fact that this included the most fairly comparable occupations in the department. Management urges that such a comparison requires that consideration also be given to the relative work loads. In fact, Management insists that the work load difference be a direct measure of what the relative incentive earning opportunity should be.

Work load as such is not mentioned in Section 5. There is a reference to previous job requirements which by its juxtaposition and context seems to be coupled with the previous incentive earnings.

In any event, we are directed by sub-paragraph 4 to decide the question of equitable incentive earnings in relation to other incentive earnings, obviously meaning that the earnings reasonably to be expected under the incentive plan in question must be in line with other stipulated incentive earnings. "Equitable" is a relative term and implies that the earnings under discussion be equated with certain other specified types of earnings. It does not mean that abnormally high previous earnings be kept at the abnormal level nor that abnormally low previous earnings be kept at such an abnormal level. The clear intent of a provision like that in sub-paragraph 4 is that the reasonably expected earnings under the new incentive plan be in line with those with which, under the Agreement, it should be compared. "In line with" is itself a flexible term and suggests that such earnings be within the typical range of such other comparable incentive earnings. The repeated reference in Section 5 to the Wage Rate Inequity Agreement of June 30, 1947 makes this intent entirely plain. A contract provision to make incentive earnings equitable must not be construed so as to cause the wage structure within a department or within the plant to be put out of balance.

Nor is it reasonable to interpret "equitable" to mean that precisely the prior level of incentive earnings must be maintained. If this were intended, it would have been stated in substantially the manner of expression that is used in sub-paragraph 5 of Section 5.

Employing normal industrial engineering techniques, the Company developed the incentive plan for this Electrolytic Cleaning Line taking into consideration the difference in work loads between these occupations and those on the Coil Washing Line which it determined were the most comparable in the department. Its studies indicated that the Operator working at the expected incentive level of performance on the new line would have a work load of 8.3% greater than that of the Tension Reel Operator on the old Washing Line.

The Company then took 8.3% of 35%, the normally expected margin of incentive earnings over standard base rate, and applied the resulting 2.9% to the Operator's hourly base rate of $2.12, and thus determined that the Operator, as compensation for his greater work load, was entitled to slightly over $.06 per hour more than the Operator on the Coil Washing Line. This hourly earning rate was $3.047, and the Operator on the new Electrolytic Cleaning Line was therefore entitled to earn $3.11. Applying the same percentage and method to the Welder Operator and the Feeder, Management set their proper hourly earnings at $2.744 and $2.597. Such earnings would represent a margin over the respective base rates of 46.7% in each instance, as compared with margins for their counterparts on the Coil Washing Line of 43.7% for the Operator, 42.9% for the Stitcher Operator, and 43.3% for the Feeder.

As the work progressed, however, the crew members did not attain the expected earnings. From the pay period ending February 27, 1955 until July 1, 1955 the Operators' expected incentive earnings were $2.00 (to be added to the fixed base of $1.11), and from August 5, 1956 on these expected incentive earnings were $2.092 (or total expected earnings of $3.431). These expected earnings have consistently not been reached, being missed, however, by somewhat less in the later periods, but still falling short by $.40 or more per hour.

If the revision proposed by the Company on October 4, 1956 were put into effect, to cover the three handling elements not properly provided for and the reduced speed which has been used since March 15, 1956, in the pay periods between August 12 and November 3, 1956, the Operators' incentive earnings would have averaged $1.839, as compared with the expected of $2.092, which is still some 25 cents below what the incentive plan is expected to produce for incentive effort. Yet the tons per turn have risen substantially since 1955, and there have been, in September and October, 1956, five instances in which on certain turns the expected incentive earning mark has been met, together with two or three near misses.

The Welder Operators' and Feeders' earnings have followed the same pattern. Since August 5, 1956 the Operators' expected total earnings are $3.431 per hour; as of 1954 this figure was $3.11, and on July 1, 1955 it became $3.28.

The parties seemed to be in agreement that the most appropriate comparison under Section 5 to be used in this instance is that between the earnings on the Electrolytic Cleaning Line and those on the Coil Washers. This is probably because the former earnings were not abnormal but rather within the general range of incentive earnings in the department, so that the basic desire to find what is equitable in a balanced wage structure would be met by this test.

How, then, can it be decided whether the conclusions reached by the Company's industrial engineers are entirely sound and must be accepted? This would mean that it would have to be found that the employees have not been putting forth the customary and expected incentive effort, which their representatives strongly deny. They argue that no employee has been directly charged with doing so, and that no one has been cautioned or threatened with discipline on this score. Management concedes that there has not been sufficient withholding of effort to warrant disciplinary action, but that nevertheless the employees have not responded willingly to supervisors' suggestions as to how they might improve their performance.

I am disregarding the factor of early unfamiliarity with the new occupations, because I have been examining more recent performance records, even though they were a year or more after the grievance was filed. This, in a general discussion of the incentive problem, the parties agreed I might do, to find help in passing on the more difficult aspects of these cases. In fact, Management has been submitting the results of check studies made long after the incentive was installed in all incentive cases, and in this very case both parties agreed I should try to resolve this entire dispute, including the revisions proposed by the Company in October, 1956 by reason of reduced speed of operation and proper allowance for different handling procedures. I believe it is helpful and constructive in a search by an arbitrator for equitableness in a new incentive to be permitted to examine the experience over as long a period as is available.

Perhaps the failure to attain expected incentive earnings is partly explainable by the allowance made for the reduction in speed. Maximum and effective speeds are different, and the Union contends that originally when the incentive plan was installed the maximum speed was 2500 feet per minute and the effective speed was 2200 feet, and on March 15, 1956 when the Company posted a notice that the line would be operated "not over 2000 feet per minute" this meant the effective speed would be 200 or 300 feet less per minute, whereas the Company thereafter treated the 2000 feet per minute figure as that of the effective speed. This, the Union urges, explains why the employees have not been able to attain expected earnings, -- that the Company has not made the proper adjustment for this reduction.

An adjustment in the incentive plan seems reasonably necessary to make this plan equitable, by the Agreement tests which the parties seem to consider appropriate. The expected incentive earnings level established by the Company is not inequitable. It is possible, I am convinced, for the employees to put forth such effort as more closely to approach this expected level, but not to bridge the entire gap. If the incentive plan were so adjusted as to provide the employees $.125 more, then the expected earnings level will be within attainable reach. This is in addition to the revision proposed by the Company on October 4, 1956, effective in part as of December 6, 1954, and in part as of March 15, 1956.

The award is as follows:

(1) That Wage Incentive Plan, File No. 78-0212, be adjusted in two respects:

(a) To provide Operators (and other crew members accordingly) $.125 greater incentive earnings, effective as of the date when the new incentive was put in effect;

(b) To give the employees the benefit of the revisions proposed by the Company on October 4, 1956, in the amounts and as of the effective dates suggested in the Company's said proposal of revision, to compensate for the additional handling procedures and the reduction in speed.

(2) That decision is reserved on the issue whether the incumbents of the job when the new incentive was installed are entitled to receive their previous average hourly earnings while the new incentive plan remains in dispute.

February 18, 1957

David L. Cole
Permanent Arbitrator