Grievance No. 14-E-21
Appeal No. 151
Arbitration No. 155

Opinion and Award

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

Appearances:

For the Company:

Henry M. Thullen, Attorney of Vedder, Price and Kaufman
Tom Cure, Assistant Superintendent, Labor Relations
Tom Tikalsky

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Secretary, Grievance Committee

The issue in this appeal is whether the Company, by reason of an alleged change in the scheduling of Mechanical and Welder employees of the No. 3 Blooming Mill on January 31, 1955, violated Article VI, Section 5 (a) and (b) of the July 1, 1954 Agreement. The Union requests, if the above issue be resolved in its favor, that a certain 4-2 schedule which was allegedly in effect for some years prior to January 31, 1955, be reinstituted.

The Union's case is substantially as follows:

Based upon Union Exhibit No. 4 constituting a "Master Schedule" for the period "4-22-46 to 8-11-46" the Union claimed that the mechanical and welder crew members of the No. 3 blooming mill who perform necessary maintenance and repair on mill equipment had a schedule of work in a recurring pattern described as the "4-2 type modified schedule". Such a schedule contemplated four days on, two days off for four weeks; five days on, one day off for two weeks; five days on, two days off for one week. (The Master Schedule appears to conform to this pattern). The Union contends that the pattern of this work schedule persisted from 1946 until January, 1955 under contract provisions which, although not all placed in evidence, appear to have been similar to those in Article VI, Section 5 (a) and (b) of the 1954 Agreement.

In support of the continuity of such scheduling the Union submitted Exhibits 5, 6, and 7, being original Company schedules for the crew involved for the periods March, 1953, July, 1954 and May, 1954, respectively. It was agreed by the parties that these exhibits reflected actual work performed by the men on the crews on the days and during the weeks represented, rather than projected or anticipated schedules of work.

The Union claimed that in January of 1955, a general departmental departure from this 4-2 schedule was effected without notice to the Union Grievance Committeeman or the crews involved; that no "mutual agreement" to make the change was arrived at; that the matter was grieved and taken up through the steps of the grievance machinery, but no satisfaction was obtained. The change was stated to have caused hardship to the employees by forcing them to "double over or double back with less hours of rest" and "to work seven or eight consecutive days in a row without a day off;" that it was in violation of Article VI, Section 5 (a) which states that

> "Unless otherwise mutually agreed, the schedules now operative throughout the plant shall remain in effect for the life of this agreement,...;"

that sub-section (b) of that section affords no permission or license to the Company to depart from the specific schedule-guarantee in sub-section (a); and that the 4-2 type schedule should be reinstituted.

In further support of its position the Union submitted an award handed down by Albert I. Cornsweet, Arbitrator, on November 28, 1950 involving substantially similar provisions of an earlier contract between the parties, the date of which is not identified. Arbitrator Cornsweet, in that award required the Company to "revert" to a 4-2 type schedule in force on the effective date of the then current Agreement.

The Company's response is substantially as follows:

a) Article VI, Section 5 (a), whatever it may require, is specifically made "subject to the provisions of Section 5 (b);" that Section 5(b) cannot be construed as requiring a continuation of a "schedule" which regularly required the working of overtime on down turns in the blooming mill, as has been the fact, especially in the light of other premium pay provisions designed to discourage such overtime; and that Section 5 (b) in unambiguous language provides that the "determination of the daily and weekly work schedules shall be made by the Company and that such schedules may be changed by the Company from time to time."

b) The work schedule of the crews involved in the period prior to January 31, 1955, did not in fact follow any pattern recognizable as a 4-2 schedule. In support of this assertion the Company in Company Exhibit A set forth "Schedules Actually Worked by First Class Millwrights for eight weeks prior to January 31, 1955" and asserted that with the exception of a worker represented by one clock number there was no recurring pattern of work such as would identify a 4-2 type schedule (See Company brief pp. 3 and 4); that the variations from week to week over a period of time demonstrate that there were no "schedules...operative" (Article VI, Section 5 (a) ) prior to January 31, 1955 and that therefore, the Company's action in establishing one did not violate any provision of Section 5 (a); that absent a change in "schedules" the Company was not obliged to and did not notify the Union of its action, and in any event the Union was not harmed thereby because there was subsequent discussion with both the Union Committeeman and employees and opportunity was afforded to present other and more satisfactory schedules for consideration.

c) In any event there is nothing in the August 5, 1956 Agreement requiring the Company to maintain in effect an allegedly prior existing schedule merely because of its prior existence. The Company asserts that it is complying with the scheduling provisions in the new contract (Article VI, Section 1, D) by scheduling a "normal work pattern" as that term is defined in that Section and that under said contract no award may be made for a return to a "so-called 4-2 type of schedule" in the absence of agreement between the Company and the Union Grievance Committeeman.

This case, as argued, presents a number of questions which compete for attention and resolution. For example, in referring to "schedules now operative" (Article VI, Section 5 (a) ), did the parties intend reference to the kind of daily and weekly "work schedules" and "posted schedules" referred to in (b) of that section or to a basic or ideal system such as is set forth in the Master Schedule (Union Exhibit No. 4)? What does "operative" mean? Does it mean "working," "in operation," "in effect," as the dictionary describes its meaning, or does it refer to the basic conception and plan of a schedule as distinguished from how the crew was actually assigned to shifts and days? And does schedules "now operative" refer to "schedules operative" on July 1, 1954 or for some period of time in advance of that date not designated? Further, it is to be noted that whatever schedules are to remain in effect, this shall be "for the life of this agreement." Accordingly, whatever the commitments that may have been made, would they not lapse at the termination date of the contract? Does Article XIV of the 1956 Contract keep those commitments alive by requiring grievances "to be settled in accordance with the 1954 Agreement?" And behind all these questions of contract interpretation lies the basic fact-difference between the parties: the Union claims that the evidence in the form of exhibits presented at the hearing demonstrates that a 4-2 type schedule was "operative;" the Company claims that it does not so demonstrate.

The state of the record as to the "schedules...operative" on or before July 1, 1954, is unsatisfactory. One may assume, without deciding, that "now operative" either refers to the Master Schedule or to the actual practice of scheduling on July 1, 1954, or to some reasonable time in advance of that date. Any other construction would read out of the Agreement the significance of the term "now." Hence, it is of little moment what schedules were "operative" in 1953 or in July of 1954 (after the effective date of the contract). The 1953 schedule in the exhibit presented by the Union is too remote in time; the July, 1954 schedule, too late. The same may be said of the lateness, and therefore the irrelevance, of the Company's analysis of scheduling in the eight weeks prior to January 31, 1955.

Union Exhibit 7 is definitely within the area of relevance, inasmuch as it records work experience from May 24, 1954 to June 20, 1954. But there are limitations attaching to this exhibit which should be noted. In the first place it does not satisfy the requirement of "now" operative because it does not disclose what took place between June 20 and July 1, 1954. Secondly, although the 4-2 type schedule, which the Union claims was demonstrated to have been in effect by that exhibit covers a seven week cycle (Transcript p. 99), that schedule has a span of only four weeks. Taken by itself the sample of scheduling on the exhibit is too short to prove the existence of a 4-2 type schedule. An analysis of the exhibit, furthermore shows many departures from the pattern of the 4-2 type schedule which, when unexplained, detract from

its probative value. There are, for example, periods of seven days worked and one day off, 10 days worked and one day off, successive instances of six days worked and one day off, and so forth. These instances of scheduling are clearly inconsistent with the Union's description of a 4-2 type schedule. Moreover, the schedule relates to employees who perform maintenance and repair work on mill equipment. In the nature of things such employees, unlike production workers, would be scheduled as their work is required and frequent departures from recurring patterns is to be expected.

The present state of the record affords me no more basis for making a definitive finding that the 4-2 type schedule was "operative," which the Company denies, than that it was not "operative." Under other circumstances, it might be desirable to complete the record with more satisfactory evidence from the Company's files; but considerations relating to the nature of the remedy requested here (dealt with below) as well as the fact that the commitment in Article VI, Section 5 (a) in the form in which it appears in the 1954 Agreement has been dropped from the 1956 Agreement, make such a procedure unnecessary and undesirable. It is assumed that the parties will not require guidance, for the future, as to whether the "work schedules" or "posted schedules" referred to in Article VI, Section 5 (b) refer to the same kind of "schedules" as are mentioned in sub-section (a).

Accordingly, with the realization that further exposition of the facts conceivably would demonstrate that the 4-2 type schedule was "operative," I must conclude that no such finding can be made on the present state of the record.

Arbitrator Albert I. Cornsweet in his decision in Grievance No. 17-C-60, specifically found that:

> "At the time the current agreement was executed, the employees involved were working a 4-2 schedule."

As indicated above the present state of the record in this case justifies no such finding as of the time the 1954 Agreement was executed (July 1, 1954). However, even assuming that such a finding of fact, similar to that made by Arbitrator Cornsweet, can be made here, the nature of the relief requested, in the light of the provisions of the 1956 Agreement prevents the granting of this appeal.

Article VI, Section 5 (a) requires certain scheduling policies or practices to continue "for the life of this Agreement." The 1954 Agreement terminated on August 5, 1956, when the 1956 Agreement went into force. The Union claims and the Company denies that the obligation to continue the scheduling referred to remained in force because of the operation of Article XIV, Section 4 of the 1956 Agreement. The provisions of the cited section are identical with those in Article XIV, Section 4 of the 1954 Agreement. In general terms it requires grievances filed under the previous Agreement, in the process of adjustment, to be considered under the grievance procedures set forth in the new Agreement but settled in accordance with the substantive provisions of the Agreement in effect at the time the grievance arose.

Because of the nature of this case, however, this cannot dispose of this issue. In Article VI of the new Agreement, the parties have not included the language of Article VI, Section 5 (a), upon which the Union case rests. Further, and significantly, they have substituted for the formula of "unless mutually agreed, the schedules now operative...shall remain in effect for the life of this Agreement" a series of wholly new provisions dealing with normal workday and normal work patterns. Departing from the formula of Article VI, Section 5 (a) of the 1954 Contract, they provided, not that schedules operative should continue, but that a "seven-consecutive-day period" may begin on any day of the calendar week and extend into the next calendar week; that a work pattern of more or less than five workdays in a seven-consecutive-day period shall not be regarded as deviating from the normal work pattern, if consecutive; that employees shall be scheduled on the basis of the normal work pattern except where overtime would regularly be required, or emergencies exist, or agreement is reached with Union representatives.

In the course of the hearing on another grievance involving scheduling procedures, it was suggested that the provisions of Article VI, Section 2, sub-section C-1-d, are in effect substitutes for the provisions of Article VI, Section 5 (a) of previous contracts. Article VI, Section 2, sub-section C-1-d, provides that "all working schedules now normally used in any department of any plant shall be deemed to have been approved by the Grievance Committee of the department involved." But this is far from a requirement that schedules "now operative" shall continue in effect as the previous contracts commanded. Indeed, closer examination will reveal that the entire sub-section C deals, not with how the Company shall schedule work during the week, but, rather, with the overtime pay consequences of schedules which lap over the week. It was manifestly the intention of the parties not to revolutionize the scheduling practices in the plant when they legislated the new normal work pattern (Article VI, Section 1-C). Schedules not conforming to that pattern, for the time being, were to be permissible exceptions to the normal work pattern, not subject to overtime rates. Provision was made for the withdrawal of such assumed approval of the schedules not conforming with the new normal work pattern, in which case continued scheduling, not in conformity therewith, would subject the Company to overtime rates. It is evident that whatever the extent to which current schedules may be regarded as "approved" by Article VI, Section 2, sub-section C-1-d of the new Agreement, in relation to the requirement of overtime pay, those provisions do not have the broad effect of commanding the continuance of "operative" schedules called for in the provisions of the 1954 and earlier contracts.

The clear departure from the language of the previous Agreement governing scheduling affects the force of Article XIV, Section 4, in this particular case. The general intention of Article XIV, Section 4, cannot be in doubt. Grievances, generally, filed in 1954 are to be decided by reference to the substantive provisions of the 1954 Contract. But the substantive provision of the 1954 Contract relied on here by the Union explicitly keeps the Company obligation to schedule as heretofore in effect only for the life of the 1954 Agreement. And then, instead of renewing that language in the new Contract, as was done in previous negotiations, the parties, in 1956, dropped the specific language contained in the 1954 and prior Agreements requiring the Company to continue the operative schedules, and substituted new rules for scheduling.

We must bear in mind that the Union is now, in 1957, requesting that the schedule operative as of July 1, 1954 be reinstated. This is impossible, because the rule on which it bases this request has been eliminated in the 1956 Agreement, which is now controlling as to scheduling. This is, therefore, one type of situation in which Article XIV, Section 4, can have no practical effect. The relief cannot be made retroactive; it is entirely prospective in character. This is the essential reason for not asking the parties to provide the specific and complete information on which the Union's grievance would have to be judged. Even if the Union proves its point, it could not possibly be granted the relief it requests.

The award is that this appeal is denied.

February 18, 1957

David L. Cole
Permanent Arbitrator