Grievance No. 15-E-5
Appeal No. 174
Arbitration No. 164

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

Opinion and Award

Appearances:

For the Company:

W. L. Ryan, Assistant Superintendent, Labor Relations Department
G. T. Heim, Assistant Superintendent, 44" Hot Strip Mill Department
J. Borbely, Divisional Supervisor, Labor Relations Department

For the Union:

Cecil Clifton, International Representative
Fred A. Gardner, Chairman, Grievance Committee
Peter Calacci, President, Local Union 1010
Alberto Graza, Vice-Chairman, Grievance Committee
D. Blankenship, Grievance Committeeman
D. Swentzel, Steward

In the grievance filed April 21, 1955, and in the grievance steps prior to arbitration, the Union alleged that in operating on the 4 - 12 turn on three Sundays, April 3, 10, and 17, 1955, the employees were deprived of the benefit of a local practice and condition and that this also represented a failure to maintain a schedule operative in this Mill, all in violation of the 1954 Agreement, and the relief requested by the Union was that the Company return to the long standing schedule in this Mill operative previous to April 3, 1955 which excluded start-up turns, 4 - 12 shift, on Sundays. The Union asserts that this was in violation of several provisions of the 1954 Agreement, namely, Article VI, Section 5 (a) and (b), and Article XIV, Section 6. These are as follows:

Article VI, Section 5:

> "(a) Unless otherwise mutually agreed, the schedules now operative throughout the plant shall remain in effect for the life of this Agreement, subject to the provisions of Section 5 (b) below.
>
> "(b) Determination of the daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time. In the non-continuous operating departments the Company shall, where practicable, make reasonable effort to schedule employees so as to avoid working them on Sunday.

"To accommodate the off-period planning of employees, the Company shall, insofar as reasonably possible and consistent with proper, efficient and economical operation of the plant, post work schedules for periods not less than a work week in locations where they can be readily observed by those affected twenty-four (24) hours before the end of their last turn worked in the work week preceding the work week for which the schedule is posted. Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made. In this connection it is recognized by the Union that changes required by power or mechanical breakdown or other conditions beyond the control of the Company or because of a changed condition in the business of the Company are not arbitrary changes in schedules and that such causes may require changes therein at any time. If it is alleged that arbitrary schedule changes have been made, they may be made the subject of a grievance, including arbitration. The Company shall notify the employee or employees involved of changes in the posted schedules as far in advance of the time effective as is reasonably possible.

"General departmental changes in schedules shall be made known to the Union Grievance Committeeman for the department involved as far in advance as is reasonably possible."

Article XIV, Section 6 provides:

"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."

At the arbitration hearing the Union modified its statement of facts. It asserted that work had been performed on this 4 - 12 turn on Sundays but only when at least 19 turns were worked in the given week. It also expanded the relief sought by requesting:

(1) a finding that the 4 - 12 turns in April, 1955 constituted a departure from the schedules operative when the 1954 Agreement was executed (Article VI, Section 5 (a) ); (2) a finding that the 4 - 12 turns referred to constituted arbitrary changes in scheduling in violation of Article VI, Section 5 (b); (3) a finding that such scheduling denied the employees the benefits of local conditions and practices in effect at the time the 1954 Agreement was executed (Article XIV, Section 6); and (4) that "The Company be instructed to return to the schedule in effect on the date of the July 1, 1954 Agreement."

The Company maintains that, except as otherwise limited by the provisions of the Agreement, Article IV, Section 1 (Plant Management) confers upon it the exclusive right to determine the days and turns during which

operations in the plant may be scheduled; that Article VI, Section 5 (a) does not constitute any limitation on the exercise of that right because there was no schedule "operative," either at the time the 1954 Agreement went into effect or in April, 1955, which contemplated the absence of work on the 4 - 12 turn on Sundays; and that there was no local condition or practice in effect such as is alleged by the Union.

In Section 5 (a), Article VI, of the 1954 Agreement the parties agreed to continue in effect schedules "now operative." Accordingly if at the time that Agreement went into force there had been operative a schedule applicable to the 44" Hot Strip Mill which did not include the work on the 4 - 12 turn on Sunday, the scheduling of work on such a turn on three occasions in April, 1955 would constitute a breach of the Agreement.

I have examined with care the revised data furnished to me by the Company, attached to its letter dated February 25, 1957. These record the work schedules for the Mill for the period January 1, 1950 to April 16, 1955. They disclose a varied and diverse experience during this period insofar as work on the 4 - 12 turn on Sunday is concerned, as well as a lack of consistent pattern as to the number of turns worked in a week. There were 135 Sundays worked from January 1, 1950 to July 1, 1954, the date the 1954 Agreement became effective, and the Sunday 4 - 12 turn was scheduled and worked on 37 occasions. Of 19 Sundays worked from July 1, 1954 until April 3, 1955 (the date of the first of the three alleged violations) the Sunday 4 - 12 turn was scheduled and worked on three occasions. To be sure, the tables and data presented disclose no great frequency of 4 - 12 turns worked in what may be regarded as a reasonable period in advance of July 1, 1954. In 1953, although a number of Sunday turns other than 4 - 12 turns were worked, only one such 4 - 12 turn was worked, which was on Sunday, August 9. In 1954, likewise, other turns were worked on Sunday, but prior to July 1, 1954 there were no 4 - 12 turns worked. However, Sunday 4 - 12 turns were worked on August 8 and November 7 and 21, 1954, apparently without formal objection or grievance.

The Company insists that its failure to operate the 44" Hot Strip Mill on the 4 - 12 Sunday turn was caused by two things: (1) its desire to comply with the intent expressed in Section 5 (b) of Article VI that "the Company shall, where practicable, make reasonable effort to schedule employees so as to avoid working them on Sunday;" (2) the fluctuations in its need to have this Mill operate on Sundays. It supports this position by calling attention to the identity of the Contract provisions which have been included in a long series of Agreements, all stipulating, as Section 5 (a) does, that "the schedules now operative throughout the plant shall remain in effect for the life of this Agreement." It argues from this that since it operated the 4 - 12 turn on Sundays in this Mill 30 times in 1950, and on some occasions in 1951 and subsequently, this must be taken as proof that this turn was recognized as permissible under the Contract provision in question, even though Management did so as rarely as possible. In other words, Management urges that the operative schedule contemplated the possibility of work being done on this turn when operating needs dictated that it be done.

It is significant that in the filed grievance, and in the grievance discussions which followed, the Union's contention was that the operative schedule called for no work on the Sunday 4 - 12 turn. It was not until the arbitration hearing that it modified this position by asserting that there was an understanding or practice that this turn would be worked only if 19 turns were worked in the week. This is either an after-thought or at best the injection of a most material fact, of which the Union must have been aware throughout, for the first time in the final appeal stage of the grievance procedure. This is a questionable practice which should be discouraged for the sake of developing an effective grievance procedure. If known material facts are withheld in the earlier grievance discussions, the likelihood is that these discussions will have little meaning and that there will be a flood of appeals to arbitration, a condition hardly compatible with good grievance handling or a desirable type of arbitration. Added to this is the fact that when on three Sundays subsequent to the making of the 1954 Agreement the Sunday 4 - 12 turn was worked no grievance was filed or processed. These facts lead me to the conclusion that the Company's position is well-taken, -- that in working as infrequently as possible on Sundays it was not giving up its contractual right to do so but was simply in good faith trying to observe its promise wherever practicable not to work employees on Sundays. In other words, the schedules "now operative" in the 44" Hot Strip Mill, as stipulated in Section 5 (a), were such as to include the possibility of work on the 4 - 12 turn on Sundays when the Company finds it is not practicable to avoid this.

The Union claims that under the second paragraph of Section 5 (b), quoted above, the scheduling of Sunday 4 - 12 turns on the dates referred to constituted arbitrary changes in scheduling, that the Company has submitted no specific facts to demonstrate that these Sunday assignments were caused by conditions beyond the control of the Company or because of changed business conditions. There is a short answer to this claim. It having been found that there was no schedule in effect of the character alleged by the Union, the Sunday scheduling complained of could not constitute a change from such a schedule. Furthermore, in any event, this contention of the Union, under the Agreement, could be sustained only if there were arbitrary changes from posted schedules. So far as the facts presented indicate, the scheduling in question did not represent a change from what had previously been posted, and, accordingly this provision of Section 5 (b) is not applicable.

In view of the observations above, it certainly cannot be found that there was in this Mill a local condition or practice in effect when the 1954 Agreement was executed not to work the 4 - 12 turn on Sundays under any circumstances. This being so, the Company did not violate the provisions of Article XIV, Section 6, when it scheduled such work on the three Sundays in April, 1955.

AWARD

The appeal is denied.

David L. Cole
Permanent Arbitrator

Dated: March 6, 1957