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

Grievance No. 17-E-37
Docket No. IH-6-6-3/29/56
Arbitration No. 171

Opinion and Award

Appearances:

For the Company:

William F. Price, Attorney of Vedder, Price and Kaufman
W. L. Ryan, Assistant Superintendent, Labor Relations

For the Union:

Cecil Clifton, International Representative
Joseph Wolanin, Secretary, Grievance Committee
Gus Mavronicles, Grievance Committeeman

The grievance filed on November 1, 1955 on behalf of crews of #2 Electrolytic Line of the Tin Plate Department reads as follows:

> "On May 12, 1955 a rate, File No. 78-1320 was presented. This rate covers 1 pound coating. Installation was agreed to, reserving the right to grieve.
>
> "In order to attain the desired quality it has proven impossible to maintain the former incentive earnings."

The relief sought is:

> "A revision of File No. 78-1320 in order to insure equitable incentive earnings compared with other coatings."

Actually, the grievance was intended to relate to Wage Incentive Plan No. 78-1320, Revision No. 1 which was installed May 9, 1955. No grievance had been filed as to the installation of the original incentive plan.

Revision No. 1 provides for incentive rates for the processing of one pound coated products which were introduced for processing on the #2 Electrolytic Tinning and Shearing Unit late in 1954. This unit also processes "differential coated product." The ratio of one pound coating to differential coated product produced on this unit is very small.

The Second Step answer acknowledges the inappropriateness of the rate. According to the Company witnesses this inappropriateness became evident to it, subsequent to the filing of the grievance because "further investigation and study of the factors affecting plating characteristics and operating speeds of the electrolytic tin plating process indicated that

processing speeds lower than those originally expected were required to attain desired operations." The Company contends that the unit never attained the operating speeds expected in the development of the plan on the new process, and consequently the earnings were less than anticipated. The Union disputes this and claims that Revision No. 1 became inappropriate because of a change of speed. The Union also urges that the Company's explanation of the cause of inappropriateness (failure to attain desired and expected speeds) was not made at the prior steps and should be regarded as out of order at the arbitration hearing. In this connection, the Third Step answer states that Revision No. 1 did not produce sufficient earnings "because existing plating characteristics resulted in lower speeds than originally expected, caused by the reduced plating deficiencies at a given stannite content." The Union contends that this was not included in discussions at the meeting preceding the Third Step answer. In any event, under the circumstances of this case, as they developed, I am not persuaded that the Company has insufficiently alluded to the reasons it advances for inappropriateness to foreclose it from referring to them here.

As this case took shape through the steps of the grievance procedure it is evident that there was a bare minimum of discussion with respect to the inappropriateness of Revision No. 1. This was undoubtedly due to the fact that on February 2, 1956 the Company presented to the Union a Revision No. 2 of Wage Incentive Plan No. 78-1320 (applicable to one pound coated product) and, also, a Revision No. 1 of Wage Incentive Plan No. 78-1322 (applicable to differential coated material). Both plans, according to the Company, were offered in full settlement of the grievances. The revised plan applicable to differential coated product was agreed to by the Union in November, 1956 and was installed and made retroactive. It is not here involved. The Union refused to agree to the condition attached by the Company to Revision No. 2 on one pound coated product and it has not been installed by the Company.

At the arbitration hearing the Union vigorously maintained the position it assumed at the Third Step meeting. The Union did not pursue the inappropriateness of Revision No. 1, apparently, because this was freely conceded by the Company. It claimed there, as it does here in arbitration, that where a rate is inappropriate the Agreement obligates the Company to place into effect a new incentive, the equitability of which the Union may study for the period of time specified in the Agreement before deciding whether to grieve. As a corollary, it is contended that the Company has no right to refuse to place such new incentive into effect, attach conditions of non-grievance to its installation, await the decision of an arbitrator, and thereby deprive the Union of the period of observation guaranteed by the Agreement and the opportunity of grieving, subsequently, on the basis of observed experience. The Union also claims that after an arbitrator's decision on a grievance of inequitability or inappropriateness, when the Company had previously failed or refused to install a new incentive, it still has the right, safeguarded by the Agreement, to observe, study and grieve, if it so desires. The Company denies this and states that once an arbitrator's award determines the proper new incentive (which the Company failed or refused to install where the previous incentive was inappropriate) the Union's right to grieve on the rate is at an end except where there are subsequent changes.

The current contention of the Union departs radically from the grievance as filed. Its spokesman stated "The question I have before the Arbitrator, as far as I am concerned, is: Does the Company have to install a new incentive to replace an incentive that they admit had become inappropriate?" The relief sought now is not "A revision of File No. 78-1320 / Revision No. 1 / in order to insure equitable incentive earnings compared with other coatings" as set forth in the grievance, but, rather, an award stating that the Company was in violation of Article V in failing to install a new incentive; that it was not privileged to attach the condition of no further grieving to the installation of Revision No. 2; and that the Arbitrator should order installation of an appropriate rate (presumably reserving the future right of the Union to grieve thereon).

First, it is necessary to determine as a matter of procedure whether this departure from the theory of the grievance notice is permissible. The Company argues that it is not and that the posture of the case is exactly as it was when the grievance was filed: that the compromise offer of Revision No. 2 (with the attached condition of non-grievability) was washed out by the Union refusal of the offer and the only question before the Arbitrator is the equitability of Revision No. 1 (conceded freely by the Company to be "inappropriate"); and if inequitable, what other plan (such as Revision No. 2) should be ordered to be substituted for Revision No. 1 as a final resolution of the dispute.

The Union having raised the question of the Company installing a new incentive, instead of offering Revision No. 2 with conditions, in Step Three, I find that the current position of the Union, despite its departure from that set forth in the grievance notice, is not out of order. Marginal Paragraph 42 of the 1954 Agreement specifically confers a right on the part of the Union to request the Company to install a new incentive "where an incentive plan becomes inappropriate" for a variety of described reasons, and "the Company does not develop a new incentive." In such case the employees affected may grieve. There are no explicit words of command addressed to the Company to install a new incentive, to be sure, but the duty to do so is fairly construed to exist from the Union's right to request the new incentive. Further, I do not regard as significant here the use of the words "develop a new incentive;" (emphasis supplied) despite the fact that in other parts of Article V, Section 5, the language used is "to install incentive rates" or that "new incentives shall be established." The development of an incentive by itself, without installation, in the event of inappropriateness of a current incentive plan, is of no perceivable value to the employees. Accordingly, I read Marginal Paragraph 42 as imposing a duty upon the Company to install a "new incentive;" and this demand having been made at the Third Step in pursuance of a grievance founded on the same alleged inequitability or inappropriateness as that which forms the basis for the current Union complaint and demand for relief, it is properly before me in arbitration.

Despite the foregoing observations, there are some practical considerations which must be taken into account. The grievance itself questions the equitableness of this particular incentive plan, including Revision No. 1. Normally if the Union representatives are persuasive and can find support in the facts, they would in one of the grievance steps

induce Management to revise the plan and conclude the dispute. This is the purpose of the grievance procedure. When a settlement is suggested during grievance discussions its very nature is such that the acceptance ends the matter. If the parties are unsuccessful in accomplishing this, then the arbitrator steps in and makes, as provided in Article VIII, Section 2 (Paragraph 153), a final and binding decision.

Here, however, a new fact intervened: the discovery that the anticipated speed could not be attained or maintained. This may be said to have given rise to the Union's right, discussed above, under Article V, Section 5 (Paragraph 42), to insist that the Company install a new incentive, failing which a new and separate grievance could have been filed and processed. If this course had been followed there would have been two cases: the original complaint about the incentive plan, and that over the Company's failure to install the new incentive to meet the new or changed conditions.

I believe that the subject-matters of these two possible grievances should be combined and disposed of at one time. In Arbitration No. 151 I pointed out that the parties have agreed that in incentive cases I may take into account all facts including those which have developed since the date of the grievance, so that an equitable conclusion may be reached in the shortest possible time. In this case, if the Union's request under Paragraph 42 were considered separately, which the Company does not urge, it would have to await the filing of a grievance and the relief granted would then have to be made effective not more than 30 days prior to the filing of this written grievance. This, in a case where the two parts are so closely interrelated, would be a manifest injustice. I prefer, with the tacit approval of the Company, to consider both questions as part of the original grievance and to dispose of both by one final and binding decision.

If the employees had not already had a full opportunity to note through experience how the revised incentive plan will operate, the ruling on this point might be different. The parties can readily apply the changed rates suggested in Revision No. 2 to the production figures they have, without the need of trying them out for a further period of time.

If the information and data available to the parties and presented or discussed at the hearing were inadequate I would either request further data or direct the revised plan to be put into operation with a further report and discussion to follow before a final decision is made. The experience here has been adequate and it is not a difficult matter for the parties to compute the effect of the revised figures on the production achieved or attainable. Hence, I have concluded to issue one final and binding decision to terminate the dispute over this incentive plan.

With this in mind, we come to the merits. Revision No. 1 is admittedly inappropriate. Revision No. 2 contains adjustments related to the speeds with which the unit must be operated to maintain quality standards -- speeds which I am satisfied were not attained under Revision No. 1. I have examined the plan in Revision No. 2 in detail and find it soundly developed and organized. The Union raised no specific

objections to the plan in the Step Three meeting or at the arbitration hearing, its arguments being restricted largely to the procedural aspects of the case. I find that the hourly incentive earnings, for processing one pound coated product, produced by Revision No. 1 of $1.165 (compared with $1.237 for other products processed on the unit) would be raised to $1.27 (as compared with $1.237 for other products). This represents an increase of $.105. Inasmuch as the percentage ratio of one pound coated product to other products processed by the unit for the period May through October, 1955 when Revision No. 1 was installed was but 1.5% and for the period November, 1955 through June, 1956 was 1.6% and for the period July, 1956 through January, 1957 was 3.4%, it is evident that any increase in the proportion of one pound coated product to other products will enure to the benefit of the employees involved; a decrease in the proportion of one pound coated product will not materially affect them.

I also find that the production of one pound coated product has taken place for a fairly representative period of time, giving the Union a reasonable opportunity for observation of the effect of Revision No. 2 and giving reasonable assurance that the rates provided thereunder are sound and will meet the standards of equitableness in Article V, Section 5. The expected earnings will compare favorably with earnings under other incentive plans for the unit. In view of the above and the uncontested assertion that the slower speeds on one pound coated product do not increase the work load of the crew, and, in fact, might decrease it, I find that Revision No. 2 is an appropriate new incentive.

One further observation may be pertinent. Settlements of grievances should not be discouraged by arbitration awards. The grievance procedure provides permanent machinery for the negotiation of differences in the interpretation and application of the Contract. Nothing in this award is intended to inhibit the Company from offering settlements of grievances. Likewise, nothing is intended to compel the Union to accept proffered settlements which it deems unacceptable. Obviously, it will advance the mutual interests of the parties to approach the grievance-handling process with an attitude of reasonableness. Only then may it be expected that this process will fulfill its function of disposing constructively of disputes and minimizing the volume of issues going to arbitration.

AWARD

1. The Company shall install Wage Incentive Plan No. 78-1320, Revision No. 2, retroactive to May 9, 1955;

2. This Award terminates the dispute concerning said Wage Incentive Plan.

Dated: April 5, 1957

David L. Cole
Permanent Arbitrator