INLAND STEEL COMPANY)
and)
UNITED STEELWORKERS OF AMERICA)
Local Union No. 4389)

Grievance No. 31
Operation Docket IO-BM
Arbitration No. 173

Opinion and Award

Appearances:

For the Union:

Gene Saari, International Representative
Paul Anderson, Local President
Roy Pringle, Chairman, Grievance Committee

For the Company:

Henry Thullen (Vedder, Price, Kaufman and Kammholz), Counsel
Wayne Ahl, Superintendent of Mine
John Hendricks, Superintendent of Labor Relations

The hearing in this case was held at Crystal Falls, Michigan on April 23, 1957. Peter Seitz, Assistant Permanent Arbitrator, presided.

The grievance statement in this case filed on behalf of eleven named employees, described the grievance as "shortage of skips" and the relief sought is

> "The men's names that appear above, know that all their raises are measured according to the skips pocket, they feel that they should be paid back pay for all skips taken away from them."

The grievants are ore miners at the Bristol Mine of the Company at Crystal Falls, Michigan. At the 1400 foot level these employees work in pairs or in groups of three at a mining contract, which is a location in the mine where the ore is dislodged in advance of its movement to the surface. At each contract, the ore at the level described is scraped into a "measured storage raise" which is a downward shaft with a specific rated capacity of "skips". (A skip is a bucket holding $4\frac{1}{2}$ tons of ore in which the ore is ultimately hoisted to the surface.) There are nine storage raises at the 1400 foot level, mostly about 120 feet apart. Their capacity in terms of skips varies considerably. Two of them are cribbed and the others have rough natural sides. The size and capacity of the raises varies, from time to time, as their walls are subject to erosion (in which case the number of "skips" they would contain would be greater than their original rating, or, as the ore channelled through them might stick to their sides, their skip capacity would be reduced). The miner (or his contract fellow-employee) scrapes the dislodged ore into a storage raise until it is full and places a grating on top of the hole. Then one of the contract miners descends to the mouth of the storage raise and, after notification to the gathering conveyor attendant (called "Beltman"),opens the mouth of the storage raise and causes the ore therein to fall on a gathering conveyor which transports it to a shaft called the transfer raise. Frequently the ore from several storage raises is commingled on the conveyor. The transfer raise is a rough-sided shaft about 125 feet high and varying from 10 to 20 feet in width at different places. It is estimated that it would hold the equivalent of 80 to 90 skips of ore. This transfer shaft is notable for the fact that from time to time it is believed to have retained ore on its sides only to disgorge it when special measures were taken to reach that result. The transfer raise empties out into railed cars at the 1525 foot level. These cars convey the ore some distance to a storage trench where they are dumped. This trench holds the equivalent of about 24 skips. A skiptender at this point uses a mechanically driven scraper to direct the ore in the trench into two pockets, first the North Pocket and then the South Pocket. These measuring pockets hold the same amount of ore ($4\frac{1}{2}$ tons) as the skips they empty into. When a pocket is filled a grating is placed upon it. When a skip is filled it is hoisted to the surface. It should also be noted that approximately 12% of the volume of the ore dumped in the trench prior to being scraped into the measuring pockets comes from another crew of miners not associated with those here involved. Their ore is commingled with that of the grievants before being hoisted in the skips.

The miners are compensated by a base rate and incentive pay. Their incentive plan is not written but has been in existence and mutually recognized since 1952. Their incentive pay depends on the number of skips credited to a contract (not including the skips filled with ore trammed in cars from other areas). Where the number of skips (based upon the yield on the gathering conveyor of contract storage raises) recorded by the beltman bears a rough relationship to the number of skips actually hoisted to the surface there is no problem. The contract miners are paid a certain amount per skip. But where the "skip" yield of the raises is materially greater than the actual skips ultimately hoisted, their pay is based on a formula which "allocates the number of skips hoisted for each contract in direct proportion to the storage raise count as adjusted, if necessary, by the time count of the beltman." Thus if the total of the actual skips hoisted varies by 10% from the total of the storage raise counts, each mining contract will be credited in skips actually hoisted equal to the storage raise count adjusted by 10%.

This grievance arose out of a situation, wherein, during the latter half of December, 1956 and the entire month of January, 1957, the count of skips actually hoisted to the surface was less, by a significant amount, than the calculated yield of the storage raises in terms of skips. This is shown by the following table:

	Actual Skips Hoisted	Estimated Yield of Raises (by Skips)
December 31, 1956	2, 109	2, $222\frac{1}{2}$
January 1, 1957	2, 569	2, 639
January 31, 1957	2, 501	2, $644\frac{1}{2}$

Thus for the second half of December, the skips estimated to have been yielded by the raises exceeded the skips that were actually hoisted by $113\frac{1}{2}$; for the first half of January by 70; and for the last half of January 1957 by $143\frac{1}{2}$. For the full month of January, 1957 the actual skips hoisted were 5070; the skips estimated to have been yielded by the raises were $5283\frac{1}{2}$ and the difference, in skips was $213\frac{1}{2}$. This difference reflected itself in reduced pay to the contract miners and formed the basis for their grievance.

So far as the grievance notice, Company answers and minutes of the grievance meeting, dated February 11, 1957 are concerned, (the minutes being signed by the Supervisor of Industrial Relations and approved by the Chairman of the Grievance Committee) the Union's position was that incentive pay computation should be based "on the number of times contract storage raises are emptied rather than being based on the number of skips that are hoisted from the mines". The Union also claimed the skips were overloaded and consequently more ore is removed from the mine than is credited to the men. The Company's position was that this method of determining incentive pay has been in effect without challenge since 1952 and is the most accurate method possible; that discrepancies between the estimated skip yield of the raises and the actual hoisted skip count will occur for various reasons but that over a period of time, underages and overages should balance each other out "assuming the practice of filling and emptying the raises by the employees involved is good."

At the grievance meeting on February 11, 1957 it seems to have been agreed by both parties that discrepancies between the two methods of computing skips should cancel out over a reasonable period of time and that a day by day balance is not reasonable to expect. The Union, however, was of the opinion that the unusually large amount of skips computed by storage raise yields over actual skips hoisted in the period under consideration must be due to special circumstances such as overloading of the measuring pockets and skips. The Company, on the other hand, suggested that the discrepancy might be due to improper filling and emptying practices at the storage raises, and pointed out that when additional supervision was placed in the area in the first six days of February, the actual skip and the raise counts were very close.

Various proposals were made for insuring a more satisfactory count, but agreement thereon could not be reached.

At the hearing the Union did not pursue further the earlier demand that the plan be changed by basing production on the number of times storage raises were emptied. It was conceded that the plan could only be changed by agreement of the parties, and, absent such agreement, would remain in effect under the provisions of Article VIII, Section 4 (A) of the Agreement. However, the Union referred to subsection (D) of that Article and Section which provides that

> "Each employee while compensated under an existing incentive plan shall receive for each pay period worked the highest of the following:
>
> "1. The total earnings under such plan, * * *".

The Union claimed that total earnings were not received. Further, as evidence of the overloading of the pockets and skips referred to at the grievance level it presented the testimony of the skip-tender that on two occasions, early in the month of January, the mine Captain said to him, "Let's put a little more in the South pocket. We haven't very much on the stock-pile." In compliance with this order, as he understood it, the skip-tender testified that he did overload the south pocket during the rest of January. Captain Robiak, the Captain of the mine, however, testified that during December he and others had observed that the skip-tender was consistently failing to fill the south measuring pocket; that he told him on two occasions to fill them up, but not to overload them. He also pointed out that there were physical difficulties in filling the south pocket to a height level with the scraper and that it was necessary to have a slight overage on one side of the pocket to make up for deficiencies on the other.

Mr. Ahl, the Superintendent of the mine also testified that the pockets and skips were not overloaded. He also referred to the fact that the Company has a strong interest in preventing overloading of the skip pockets and the skips. The hoisting machinery, he testified, is inadequate for the handling of overloaded skips. Several spokes in the principal wheel of the skip hoist were cracked and had been welded several years ago. Another weld on the wheel was made in January. Any overloading of the skips, he stated, could have serious consequences and interfere with the continuous operation of the mine.

Considerable testimony was offered concerning the 14 C raises and the 14 D raises. Mr. Ahl who came to the mine as Superintendent in July of 1956 was informed, in November 1956, that the contract miners on the 14 C raise (not cribbed) claimed they were entitled to greater skip capacity than the 6½ skips with which they were credited. His investigation of the matter disclosed that this raise was probably entitled to a rating of 8.9 skips; but his investigation also brought to light the fact that although the 14 D raise was rated at 3½ skips it was actually being credited with 4½ skips. He had an engineer survey the 14 D raise and he confirmed a rating of 3½ skips. During December and January, while the matter of both skips was in controversy and under consideration, the contract miners were permitted to obtain credit for 4 skips (instead of the 4½ previously rated) with the understanding that they would place a heap of ore on top of the "grizzly" or grill; and the rating of 14 C was changed from 6½ to 9 skips. The interim settlement of the 14 D controversy, according to Ahl, was made with the understanding that there would be no serious discrepancy between the raise and skip count. When this discrepancy developed, Ahl again re-rated 14 D on January 28 to 3½ skips, perhaps tardily and belatedly.

The Company readily concedes that the incentive plan is far from perfect in conception or accurate in result. Contract miners are unsupervised in the amount of ore they place in the raises. Such supervision, because of the distance of the raises from each other (120 feet) and the absence of direct access from one raise to another, is alleged to present difficult problems and to involve considerable cost. Thus, a failure on the part of one or another group of contract miners properly to fill their raises could cause a considerable part of the discrepancies forming the basis of this grievance. There is no direct evidence that this has occurred, but Mr. Ahl testified that he had a check made starting January 31 for one week and during the period of the check the skip count was actually greater than the raise count (in skips), reversing the experience in December and January.

Further, excepting for the two cribbed raises, the raises are concededly not accurate measures of the volume of ore they hold. When the ore is released from the raise to the gathering belt it commingles in the storage trench with ore mined at other locations. Finally, when hoisted to the surface, the volume of the conveyance (skip) is the measure of the incentive pay, but the miner is not credited with actual skips hoisted but with assumptions relating to the raises which, under the circumstances described, are not entirely satisfactory as measures of volume.

The Company represents not only that this is a common method of incentive wage measurement and payment in ore mines but that under the physical conditions described this is the fairest that can be devised. The Agreement commands that it be continued in effect and the Union does not challenge the plan as such; but the Union is unwilling to suffer its inadequacies while taking advantages of the benefits it confers. Everyone recognizes that the plan will produce overages and underages. The Company showed that for the month of February there were 139 actual skips hoisted in excess of the yield from the raises; in March this excess was 149. Ten employees received credit for such excess. This does not explain the extraordinary deficiency in January of 213½ skips. Indeed, I have heard from neither party a satisfactory explanation of this deficiency. The parties have seized upon a number of circumstances and conditions and elaborated on them in the hope of formulating a rationalization of the deficiency, but to a third party, these efforts still leave uncertainties.

At the hearing there was some discussion whether the grievance, to conform with the argument advanced by the Union, should not be further amended to eliminate the two miners who work on the 14 D raise. This would be on the theory that inasmuch as their raise had an overrated skip capacity they have no standing to complain of underages; to the contrary, overpayments to them might measure the extent to which the other miners have been underpaid. However, as I view this case, there would be no point in pursuing this theory. No exposition or combination of explanations establishes any liability of the Company in the form of a monetary obligation to the grievants beyond what has been paid out as compensation by the Company.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Dated: July 19, 1957