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

Grievance No. 16-E-55
Docket No. IH 19-19-5/9/56
Arbitration No. 177

Opinion and Award

Appearances:

For the Union:

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

For the Company:

William F. Price, Esq., Attorney
William L. Ryan, Assistant Superintendent, Labor Relations
John I. Herlihy, Superintendent, Industrial Engineering Division

The Grievance Notice, filed on March 2, 1956, states that

> "Aggrieved contend that Wage Incentive File No. 77-2220 covering Cold Strip #1 and #2 Oil and Piece Inspection has become inappropriate because of changes in material processed."

The relief requested is that

> "* * * the Inland Steel Company develop a new incentive in light of the changed conditions, which will be equitable in relation to other incentive earnings in the department and like departments and the previous job requirements and the previous incentive earnings."

The plan involved has been in effect since March 16, 1946. The Union argues inappropriateness of the plan by reason of a change of the material processed and a failure to satisfy the criteria in Article V Section 5. The Company argues that the plan is not inappropriate, satisfies the criteria and, in any event, the grievance is untimely.

The equipment involved in this grievance was originally in #1 Cold Strip Mill. According to the Company's prehearing brief, when certain technological improvements were made in 1948, the need for oil and piece inspection units was practically eliminated excepting for Patent Leveled sheets. Of six units previously used in the #1 Cold Strip Mill, only one was required and it was moved into the #2 Cold Strip Mill. Coincident with the removal of the machine there was a change in the product mix which affected the type or quality of inspection required. The Company reports that prior to 1948 there

was processed approximately 75% cold rolled sheets for exposed parts including stretcher leveled sheets and 25% of cold rolled sheets for unexposed parts. This ratio, according to the Company changed to 88% and 12%, respectively, in 1948 after the physical removal of the unit and the technological changes. The Union claims that over the years (without particularizing, in the absence of accurate data) there has been a significant increase in the ratio of the inspection of Patent leveled sheets and other material requiring critical inspection, over other cold rolled steel sheets. The Union, in its prehearing brief, claims that for 95% of the time patent leveled steel is being processed. The Company denies this and states that the change in product-mix took place in 1948 and has been fairly constant since.

The Company's evidence is based on the testimony of its foreman, the production records for the period prior to May, 1956 having been destroyed by fire. The Union's version of the character of the product-mix is based on the testimony of an employee who worked from time to time on the equipment. The combined May and June, 1956 figures for oil and piece inspection show 81% for cold rolled Patent steel sheets and 11.9% for other types of cold rolled sheets not requiring as critical inspection. This ratio is close to what the Company claims existed, more or less, since 1948.

The Union claims that the original wage incentive plan No. 45-0-9 installed in March, 1946, two years prior to the move to the #2 Cold Strip Mill did not contemplate inspection of the increasing proportion of patent leveled sheets processed since 1948 in relation to full production and that the quality of inspection this has necessitated and other considerations have had a deteriorating effect on incentive earnings. It is stated that the trend to lighter weight in sheets has required more sheets to be run to produce the tonnage and earnings attained approximating those when the Unit was in #1 Cold Strip Mill. The Company's position in the First Step answer was that the incentive plan as written in 1946 provided an equitable rate for all sizes and gauges of sheets and that nothing has occurred to make the incentive plan (later redesignated as No. 77-2220) inappropriate. It would appear that the Company at the hearing continued to deny that the rate was inappropriate but no longer pressed the point that the same kind of steel is processed now as was processed in 1946. The Company, as indicated above, currently claims that the change to the increased proportion of patent leveled and other types of steel requiring more critical inspection, occurred two years after the installation of the original plan, in 1948.

The record discloses rather sporadic usage of the equipment and a spotty and erratic earnings history as follows:

		Average incentive earnings
1948	3 pay periods of 28 days	$1.339
1949	4 pay periods of 28 days	1.268
1950	8 pay periods of 28 days	1.265
1951	2 pay periods of 28 days	1.356
1952-1956	no operation	
1956 (Jan.-July)	12 pay periods of 14 days	1.236
(July-Dec.)	10 pay periods of 14 days	1.134
1957	4 pay periods of 14 days	1.225

The record contains no satisfactory explanation of the fluctuation of these incentive earnings. They are explained by the Company with the otherwise unsupported observation that the employees have not put forth acceptable incentive effort; by the Union with the equally unsupported argument that there has been an increase in the proportion of product requiring critical inspection. But if the employees are not putting forth incentive effort it is difficult to account for the high incentive earnings in the five pay periods prior to the work stoppage in 1956 ($1.364; $1.316; $1.420; $1.284; $1.318) which compare most favorably with the average incentive earnings in previous years and are considerably higher than those in 1949 and 1950. By the same token it would seem that these incentive earnings, earned a few months after the filing of the grievance, do not give much support to the Union's argument as to the increase in material requiring critical inspection. It is interesting to compare this group of figures with the earnings in the pay periods ending October 10, 1949, May 14, 1950 and November 17, 1956 when $1.010 base rate only was earned. There is no explanation in the record for these violent fluctuations.

The Union states that these incentive earnings are inequitable under Article V Section 5 of the 1954 Agreement in relation to the previous incentive earnings; i.e., the incentive earnings since 1948. The Union also argues that these earnings do not meet the criterion of equitability in relation to other incentive earnings in the department. In this connection it compares earnings of the employees on the Oiler with other inspectors in the #2 Cold Strip Mill, particularly Roller Leveller Inspector 1st Class, Catcher and Feeder. The Union alleges that when in the #1 Cold Strip Mill, the Oiler here involved was running the same type of material as is being presently processed by the Roller Leveller. The incentive earnings for the Roller Leveller occupations are significantly higher than those on the Oiler. The Union introduced testimony that for oiling and inspecting, crews on the Roller Leveller get a rate 75 per cent over that of crews on the oiler.

The Company explains the higher Roller Leveller incentive earnings in the same department by stating that during World War II, in order to speed up production on badly needed heavier gauge material, the higher Class A rate was paid for Class B inspection. This resulted in a payment of 75 percent over C inspection (base rate) rather than 30 percent. This was contrary to the terms of the incentive plan. The same rate practices persisted after the war and are followed today without amendment of the incentive. Thus, the Company's argument amounts to a claim that it is not the Oiler incentive earnings that are out of line, but rather those of the Roller Leveller. The Company's interpretation of its contractual rights and duties with regard to the alleged out-of-line Roller Leveller earnings illuminates its basic position with regard to the Oiler earnings. It states that however out of line the Roller Leveller earnings may be, Section 1 of Article V, by providing that

> "All incentive plans * * * which were in effect on June 30, 1954 shall remain in effect for the life of this Agreement, except as changed * * * pursuant to the provisions of Section 4, 5 and 6 of this Article".

prevents any rolling back of the Roller Leveller incentive earnings in accordance with the original incentive plan. By parallel reasoning it argues that inasmuch as there has been no substantial change in the product-mix since

long before June 30, 1954, there have been no "new or changed conditions" since that date such as would justify regarding the incentive plan as not appropriate under marginal paragraph number 42; and, accordingly the incentive plan attacked by the Union must remain in effect for the life of the 1954 Agreement in accordance with the terms of Article V Section 1.

The Company points out that Article VIII Section 3 (Marginal 156) of the 1954 Agreement requires grievances to be filed in writing "within thirty (30) calendar days from the time the employee should have known of the occurrence of the event upon which the grievance is based." The product-mix was not changed, says the Company, in significant degree, since 1948; but even if it were, this grievance is said to be too untimely to take the incentive plan out of the freezing effect of Article V Section 1. The Union, it points out, cannot demonstrate that any "new or changed conditions" took place since 1954 that would permit the application of marginal paragraph 42 and result in a valid and timely grievance that the plan was inappropriate. Nor does the Company's argument stop there. It calls attention to Article V Section 4 of the 1956 Agreement; namely, that incentive plans in effect on its date (August 5, 1956) "and not then the subject of a timely grievance under the agreement between the parties of July 1, 1954, as amended, or subject to being made the subject of a timely grievance under the provisions of said agreement, as amended, shall remain in effect for the life of this Agreement" except as changed by mutual consent or pursuant to the provisions of Section 5.

In effect, the Company argues, in the alternative, as follows: a) that the incentive plan is not inappropriate because there has been no showing of "new or changed conditions" within the meaning of marginal paragraph 42 of the 1954 Agreement; and b) even if it be regarded as inappropriate Marginal Paragraph 26 freezes the plan for the life of the Agreement. Furthermore, inasmuch as the change in product-mix took place as long ago as 1948 and no grievance was filed at that time, the grievance is untimely.

The Union also claims that the plan is inappropriate because it does not meet the test of equitability in relation to previous job requirements. Reference was made to changes of equipment resulting in a greater work-load and the elimination of delivery service through conveyors and a buggy system. The Union also complained of greater delays than were experienced during the period the Oiler was in #1 Cold Strip Mill. The testimony of the foreman presented as a witness by the Company, however, to the effect that the present system is better than that referred to by the Union was uncontradicted and was persuasive. I heard no testimony of probative value to support the Union's position on this point.

I find as fact, from the evidence on the subject of change of product-mix, that the change took place in 1948. There is no evidence of a tangible or substantial nature that could lead to a contrary result.

With this finding made, I am presented with a situation wherein the Union currently claims inappropriateness of a plan by reason of alleged "new and changed conditions" affecting incentive earnings which took place in 1948, approximately six years before the parties agreed (on July 1, 1954) to continue all incentive plans in effect except as changed by mutual agreement or under Sections 4, 5 and 6 of Article V. The Union argues that it is not affected by any of the time limitations in the Agreement; that this is a continuing grievance which may be pressed at any time and that the only re-

striction on the Union is that retroactivity under marginal paragraph 42 may not be claimed for more than 30 days prior to the filing of the written grievance. In support of this "continuing grievance" theory, the Union refers to Arbitration Award No. 135 issued by Jacob J. Blair, Arbitrator, on January 10, 1956. The Company claims that the Arbitrator was wrong and, in any event, the reasoning he used in a classification case should not be extended to the inappropriateness of an incentive plan.

The validity of this theory was argued with great force and vigor. The principle that adjudication in a case should not go beyond its strict necessities is as important in arbitration as it is at law. If this principle should be ignored the arbitration table would no longer be a forum for the resolution of specific and real disputes; the parties would then be encouraged to seek judgments on general, theoretical and hypothetical questions for which the arbitration process was not devised, and which are not within the range of jurisdiction delegated to the Arbitrator by the parties.

Applying this general principle of procedure to this case, I find that in disposing of the matter I am not called upon to go further than to determine that there is an insufficient showing here that the incentive plan is inappropriate.

There has been a general decline in incentive earnings since 1948, excepting for the unusually high earnings for the seven pay periods ending April 8, 1956 to July 1, 1956 (averaging $1.306), the pay period ending October 6, 1956 ($1.320) and the pay period ending February 9, 1957 ($1.286). These peaks, sustained over some few pay periods suggest that despite erosion of earnings it is not improbable that the employees can meet the incentive standards.

The erosion of earnings shown in yearly averages does not, in itself, demonstrate that the plan is inequitable in relation to previous incentive earnings. Fluctuations, both up and down, are not uncommon in incentive earnings. The plan as originally formulated applied to all gauges, thicknesses, widths and lengths of steel run on the equipment. This plan was not contested by the Union and the employees assigned to the equipment received the benefits of relatively higher incentive earnings at an earlier date when greater tonnage was produced. The plan bears the legend "These rates are subject to revision in the event of any change in equipment or methods affecting production" but I am not aware that any changes in equipment or methods have been claimed to have occurred since 1948; and since that date, the 1954 Agreement undertook to freeze and to continue in effect all existing plans (Article V Section 1). The plan did not guarantee the processing of any particular type of steel. The employees' earnings, despite the absence of proof thereof, may have been impaired by the 1948 increased proportion of steel which required more critical inspection; but this did not constitute any departure from the plan nor was it a circumstance making the plan inappropriate under the provisions of Marginal Paragraph 42. There is lacking here a showing of a permanent or new change in type of product-mix such as would render this case one involving a "new or changed condition".

Accordingly, I reach the conclusion that the diminution in earnings, over the years, does not in itself, demonstrate inequitability of current earnings in relation to previous incentive earnings; furthermore, that there were no "new or changed conditions" so far as the record of this

case goes, on which the claim of inappropriateness could be based. The plan as originally constituted cannot be said to have guaranteed the running of specified types of steel in designated proportions.

The evidence relating to changes in job requirements in the record is too vague, uncertain and inconclusive to support a finding in the Union's favor. Finally, the record of this case affords no foundation for reviewing the Roller-Leveller rates.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Dated: July 19, 1957