INLAND STEEL COMPANY )
) Grievance No. 20-F-4
- and - ) Docket No. IH-104-104-1/4/57
) Arbitration No. 206
UNITED STEELWORKERS OF AMERICA)
Local Union No. 1010 ) Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent,
Labor Relations
A. T. Anderson, Divisional Supervisor,
Labor Relations

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Acting Chairman, Grievance Committee
John Negovetich, Grievance Committeeman

The grievant, Paul Copak, was disciplined with the loss of pay for three turns. He asks to be reimbursed and that the discipline letter be eliminated from his personnel file.

The grievant fills the occupation of Handyman. On October 24, 1956, according to the version of events put forward by the Union, he was requested to perform as Crane Hooker by the Foreman of the Boiler and Fabrication Shops. The Hooker job is the lowest job in a multi-job sequence, which is not the sequence of which the job of Handyman is a part. The Hooker commands a lower rate than Handyman. The grievant told the foreman that he had a sore foot and that he would work as Hooker the next day but could not work as Hooker on the day in question. Thereupon, the foreman told him to go home and the discipline letter was issued.

It is not in dispute that had the grievant worked as Hooker, under the provisions of the Agreement he would have received the higher rate of his regular job as Handyman.

The Company's presentation at the hearing of the events of October 24, 1956 was hampered by the fact that the foreman was ill and hospitalized. Without objection by the Union, the Company presented a signed statement by the foreman which read as follows:

"On Wednesday morning, October 24, 1956, at about 7:45 a.m., I told Paul Copak to go ahead and hook today because it's your turn. I then left him to walk down the walk way. He then said 'I don't want to hook today.' I said 'What is wrong'? He said 'I have a sore foot.' I then said 'If you have a sore foot, go to the Clinic and get a report and if you have a sore foot, we will find some modified work for you to do.' He then said 'If this is all you have to do, I will go home.'

"He then left. He did not report to the clinic."

The grievant denied that he had been referred to the Clinic to determine whether, in fact, he had a sore foot -- which disabled him from performing as Hooker -- a point that was strongly stressed by the Company. The grievant stated that the clinic was not mentioned to him in his discussion with the foreman, that he had used the clinic on other occasions and does not object to medical examination or treatment there, and he indicated that he would go there again if requested or directed by his foreman.

The Union contends that the grievant's dismissal from work was without cause or reasonable justification. It bases its position on two grounds: (a) that the grievant should not have been expected to work as Hooker with a sore foot considering the amount of walking that job entails; and (b) that in any event the assignment of the grievant to the job in the absence of emergency was not justified.

The Company states that for 29 years vacancies in the Hooker occupation caused by temporary absenteeism of Hookers (as in the instant situation) had been filled without dispute or objection by assignments of employees in the Handyman, Burner or Helper occupations in the Shape Cut Machinery Sequence; that a list of such employees was maintained and on October 24, 1956 it was the grievant's turn to fill in for a temporary vacancy in Hooker; that the grievant had formerly been a Hooker and was familiar with the operation; that on the day in question there was no Tool Crib Attendant, Painting Laborer, Janitor or Sweeper (single-job sequences on the Promotional Sequence Diagram) who could have been assigned to the vacancy, either because there were no incumbents of the jobs or because those scheduled on the turn were known to have limited physical capacity disqualifying them from acting as Hooker; that there was no labor pool in this sequence and that the bottom jobs in the only other multi-job sequences were "youngsters and they are on probation." The Company takes the position that its assignment of the grievant to Hooker was amply sanctioned by practice and by the provisions of Article VII Section 6 (a) of the Agreement. Furthermore, it urges that the discipline was justified on the ground that the assignment to

Hooker was refused without good reason. The Company claims that the credibility of the grievant's testimony as to the condition of his foot and his ability to perform as Hooker is destroyed by his refusal to subject himself to physical examination at the clinic and his expressed but inexplicable willingness to work as Hooker the next day. The Company observes that the coding for the classification of Handyman under the factor "Physical Exertion" is 3-C and 5-A-11 whereas that for Hooker 2-A, 3-A and 4-B-9. The Company argues from this that the Handyman occupation actually requires more physical exertion than Hooker, and, accordingly, that grievant was not justified in refusing the job on physical grounds. Finally, the Company asserts that the grievant violated Article III Section 5 (a) (the no-strike, no stoppage provision) and as a result was disciplined under Article IV Section 1 (Plant Management).

On the whole record, the issue of fact as to whether the grievant was directed to demonstrate his incapacity to perform as Hooker on the day in question is resolved in favor of the employee. There are several reasons for this. It is noted that although the Company's case is strongly grounded in doubt that the grievant actually had a sore foot which made it difficult for him to work as Hooker, there is no reference in either the first or the third step answer to his failure or refusal to have this excuse checked by going to the Clinic. Secondly, the grievant created a favorable impression of credibility as a witness at the hearing when he denied that he had been requested to go to the Clinic. Third, manifestly the grievant has a poor command and understanding of the language. It is not inconceivable that there may have been a simple failure to understand the words used.

The second step answer did refer to a request to go to the Clinic and the grievant's refusal to do so. This makes it all the more difficult to understand omission of any reference to this aspect of the case in the first and third step answers, especially as it is a central and basic fact relating to the Company's disbelief of the truthfulness of the excuse the grievant offered. It cannot be determined from an inspection of the record whether, at any of the steps of the grievance procedure the direction or request that the grievant go to the Clinic and his failure or refusal to do so was discussed. It is significant, perhaps, that the Union's pre-hearing brief does not even address itself to the question as being involved in the case.

Under all of these circumstances I reach the conclusion that the evidence before me, which it is appropriate for me to consider, leads to a finding that the grievant was not requested or directed to go to the Clinic, or if so requested or directed that he did not comprehend this, and his departure from work did not involve such an act of insubordination as constitutes "cause" for discipline. I am aware

of the fact that in reporting the event on October 24, 1956, the General Foreman of the Boiler and Fabrication Shop wrote that the grievant's supervisor had told the grievant "to go to the Clinic for an examination" and that he did not do so. This information was elicited at the hearing in response to my inquiries and seems not to have been the subject of consideration at the grievance steps. It was an item of evidence which, judging from its pre-hearing brief, the Union was not prepared to meet at the arbitration step. The belated manner in which this statement of the General Foreman reporting what the supervisor had said came into the case did not, under the circumstances, afford the Union the necessary opportunity to meet this square factual issue.

Accordingly, I find that the grievant did have foot trouble that might reasonably have served to excuse him from performing as Hooker on the day in question, since this job requires more walking than Handyman, and, in any event, he was not guilty of such insubordination as constitutes cause for discipline.

In view of this finding, based upon the assumption that the assignment was an appropriate one, it becomes unnecessary, in this opinion, to discuss the Union's contentions with respect to available alternative methods the Company might have used for filling the vacancy. The record does not support any finding of a violation of Article III Section 5 (a) (the no-strike, no stoppage clause).

AWARD

The grievance is granted. The grievant shall be reimbursed for his lost time and the discipline statement of October 24, 1956 shall be removed from his personnel file.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: October 2, 1957