INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 13-F-16
Docket No. IH-116-116-1/17/57
Arbitration No. 208

Opinion and Award

Appearances:

For the Company:

Louis Davidson, Assistant Superintendent, Labor Relations
T. G. Cure, Assistant Superintendent, Labor Relations
Emil E. McGaughey, Superintendent No. 3 Blooming Mill, No.4 Slabbing Mill
George Lundie, Assistant Superintendent, Safety

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Secretary, Grievance Committee
A. Garza, Vice Chairman, Grievance Committee
Don Lutes, Grievance Committee

Three grievances have been presented in arbitration in which Section 6 of Article XI, Disputes as to Safety and Health, is involved. This is a new provision first incorporated into the Agreement in August, 1956, and it is clearly necessary that some ground rules be agreed upon promptly. It is an unusual kind of provision in that it appears to be predicated on the subjective reaction of the individual employee, and the grievances already heard in arbitration demonstrate the need for construction and elucidation which will offer guides to the parties and thereby constrict the area of disagreement.

The new contract provision is directly involved in this case and in Grievance 8-F-14, and indirectly involved in Grievance 8-F-16. The general comments which follow are equally applicable to all three cases, although the particular facts of each must be analyzed in the light of these general interpretative observations.

Article XI, Section 6, is as follows:

> "An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to: (1) file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from the job or jobs, without loss to their right to return to such job or jobs; and, at Company's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to

the safety of the job, shall take any steps to prevent another employee from working on the job.

"The arbitrator shall have authority to establish rules of procedure for the special handling of grievances arising under this Section 6."

We see, then, that an employee, or group of employees, who believe that they are required to work under abnormally unsafe or unhealthy conditions, have a choice of two courses to follow. (1) They may have preferred handling of a grievance which they may file. (2) They may have relief from the job, retaining their right to return to the job, but must accept assignment to such other work as the Company may decide is available.

There is a basic condition, however. The employee must believe he is being exposed to abnormally hazardous or unsafe work conditions. A premise based on the belief of the employee is most unusual. We have already seen in three grievances on this matter that beliefs vary. The grievant in each case said he believed the work to be abnormally unsafe; yet other employees were performing the work, and the Company's Safety Department considered the job as not unduly hazardous. Thus, there were three beliefs. The Company would nullify the individual employee's belief if it is not in accord with the belief of the Safety Department or that of other employees, on the theory, presumably, that the individual employee's belief would then not be a sound or reasonable belief. The trouble with this approach, however, is that it runs counter to the provision of the Agreement. The Agreement predicates the subsequent course on the belief of the employee or groups of employees who are to perform the work, and not on the belief of others.

As stated, this is unusual. Perhaps the reason for this is that a fearful employee is not an efficient employee and may tend to be accident prone. It may be a recognition of the proper priority of conflicting considerations, as when pressure for production and personal safety tend to clash. In any event, the meaning of the contract provision is clear, and the Arbitrator may not add to, detract from, or alter the provision. (Marginal Paragraph 295).

The primary test must, then, be the sincerity or the good faith of the employee's belief that the work is unsafe or unhealthy beyond the normal hazard inherent in the operation. Clearly, this calls for more than a mere assertion that he has such a belief.

This provision certainly was not meant to provide a shield for malingerers or shirkers. This presents obvious difficulties, since a person's state of mind must be inquired into. There are a number of situations in which similar problems arise. In criminal cases intent, malice, or premeditation are often in issue. How does one determine this? Admissions or statements by the employee contradicting the assertion may cast doubt on the sincerity. A failure to be able or willing to explain why a fear has developed as to the safety of a job which the employee has frequently and recently been performing without objection or protest may be enlightening. Possibly changes in the nature, methods or conditions of the job may cast

some background light on the bona fides of the asserted belief. Manifestly, evidence indicating that an employee had made plans to be elsewhere or to do something outside the plant would be pertinent in an inquiry into the sincerity of alleged belief of this nature.

On the other hand, an employee may be in a genuine state of fear, perhaps of recent origin, and this may be attested to by the employee's physician, consultant or friends. A man employed in a hazardous occupation is paid in part for the hazards he faces, and certain hazards are normal in such a job. But when the job characteristics or methods are changed, differences of opinion may well arise as to whether the hazards have not been enlarged and become abnormal. The employee's viewpoint may be dictated by the fact he must change his work habits because of the change in methods, although the job hazards have not actually been increased, but the employee's belief would nevertheless be sincere. A contract provision revolving about the employee's belief, however, must be taken to invite personal or subjective reactions.

The word "believe" as used in Section 6, Article XI, is to be distinguished from "cause" as it appears in Article IX, Section 1 (the discharge section). In Marginal Paragraph 213 there is provision for discharge of employees "for cause." In Paragraph 215, however, the word "cause," as used in the resulting grievance procedure, is qualified by the expression, "that the action taken was unwarranted in light of all the circumstances." This in substance introduces into a discharge dispute the test of what a reasonable man would have done. We find no such qualification or counterpart in the Safety Disputes section. The employee's belief in that section remains the belief of the employee, and is not to be countermanded or judged by what someone else would belief in similar circumstances.

Where it is shown by whatever method is available or effective that an employee is not in good faith when he asserts his belief, and asks for relief from a job, then we have the case of an employee refusing a normal work assignment. In such a case, discipline will be warranted.

Moreover, it must be remembered that when an employee requests to be relieved from a given work assignment, he assumes the risk that he will be sent home if Management in its discretion decides there is no other work available for him. There is no assurance whatever that other work will be provided. This should serve as a partial deterrent also to the unrestrained or unjustified impulse to claim a belief that the work is abnormally hazardous.

If an employee becomes physically, psychologically or mentally unqualified for a certain type of work, and resorts continually to a plea of belief of abnormal hazard as the means of avoiding job assignments customary in his occupation, then the problem resolves itself into a question whether the employee has the physical or mental fitness for the job, and would have to be determined by provisions of the Agreement other than Article XI, Section 6. This observation is made because such an employee could not be said not to believe in good faith that the work is unduly hazardous. He may truly believe that it is, -- to him it has become and is abnormally dangerous, and yet steps may have to be taken to transfer him out of the job for which he may have become unqualified.

Management would have the employee's belief accepted or rejected depending on whether a reasonable man would believe as the employee professes to believe. For the reasons indicated above, this view must be rejected.

If, however, the employee or group of employees elect to continue to work, under protest, and file a grievance for expedited handling as provided in this section, then the test proposed by the Company would in substance be applied in the grievance procedure. The question to be considered in such a grievance would necessarily be whether the work is abnormally unsafe or unhealthy under the prevailing conditions.

If the second alternative is followed, i.e. where the employee insists on relief from the job, if it is found that he sincerely believes what he asserts, then he would be within his rights as stipulated in the Agreement in doing so and in insisting that he retain his right to return to the job. Of course, he must observe his further obligation to take no steps to prevent other employees from working on the job, whatever he may believe with regard to its safety, and he must submit to Management's decision to assign him temporarily to other available work or to send him home.

Because of the subjective nature of the primary step in Section 6, Article XI, the Company and the Union must recognize the necessity of having some acceptable intelligent approach. Their mutual self-interest dictates this. We note, for example, that in Grievance 8-F-16 the employee initially expressed the belief that the work in question was unsafe within the meaning of Article XI, Section 6. After being shown by a thermometer reading that there was no excessive heat, and after a discussion among his Union Safety Committeeman and several Management people in his presence, he changed his mind and withdrew his objection to the job. His belief was changed by this process of discussion and demonstration. This suggests one way of examining into the good faith of an asserted belief and at the same time of modifying the belief if it is factually unsound.

In Grievance 13-F-16, which is the dispute here involved, the grievant, L. Gilbeau, a Crane Machinist, invoked the relief provision of Article XI, Section 6 when directed by his Mill Foreman in the No. 3 Blooming Mill to repair the counter weight cable on the No. 5 Pit Crane while the crane was in the middle of the building with Numbers 4 and 6 Pit Cranes in active operation on either side. He was sent home and disciplined by the loss of pay for the balance of the day in question and for three additional turns. The Company imposed this penalty, in reliance on its theory of Article XI, Section 6, when the grievant persisted in his refusal after the Department Superintendent read to him a copy of the safety procedure that would be followed to protect him.

Management considered Gilbeau's action as a refusal to perform a work assignment and in the nature of a work stoppage. These three pit cranes play important parts in the operation of this mill. They are used to charge ingots into the soaking pits and to draw ingots from these pits for delivery by ingot buggy to the rolling mill. There must be coordination between the pit cranes and the operation of the pits to maintain a high level of production in this Blooming Mill. When one of the cranes

goes out of order during the charging and drawing operations, a heavy load is placed on the other two cranes, and it is important to get the disabled crane repaired and back in functioning condition as quickly as possible.

The three pit cranes operate on the same runway. In making a repair of the kind required on December 10, 1956, the Crane Machinist would have to work overhead in an unstable position. This type of work has been reflected in the evaluation of this job by according to it the highest accident exposure point value in the entire Strip Mill area, under the general heading "frequent exposure to falling from overhead position." Simply put, the issue before us is whether this grievant honestly believed he would be exposed to abnormal safety or health hazards by doing this repair job while the No. 5 Pit Crane remained in the middle of the building on the same runway along which the No. 4 and the No. 6 Pit Cranes were actively engaged in charging or drawing operations. Gilbeau insisted on having the No. 5 Pit Crane moved to the end of the building before he would undertake the repair job. Management declined, because this would have put one of the other cranes out of operation while the repair was being made. The repair job would have taken 20 to 30 minutes, and in Management's opinion this would have placed too great a load on the one crane remaining in active operation. As a matter of fact, after Gilbeau's refusal, No. 5 crane was left unrepaired while the other two continued on the job until the pressure was relieved, and then No. 5 was moved to the north end of the building and repaired. The repair job took 20 minutes.

In April, 1956 a similar incident occurred also involving Gilbeau, and as a result the safety procedures were modified by recommendation of the Safety Department and a group of supervisors in the mill. One of the recommendations was that the No. 5 Pit Crane should be placed at the end of building when one of three kinds of work are to be done: replacing limit switch, changing ram cables, or changing brake on main hoist. The job involved in this dispute was the repair of the counter weight cable. It was testified that all such jobs are done on No. 5 after it has been placed at either end of the building except when urgency of production dictates that the other two cranes be kept in operation while the repairs are in progress. In April, 1956 other recommendations were made to protect the Machinist when working on No. 5 Pit Crane in the middle of the building, including the use of bumpers and the placing of a watcher on the pit floor to warn approaching cranes by intercommunication.

It must be remembered that the new contract provision, Article XI, Section 6, did not come into existence until August, 1956, some four months later. For his part in the April incident grievant was given a reprimand, but obviously, the rules governing such situations must now be judged in line with the new provision.

Grievant, supported by two other Crane Machinists who work in the same area, testified that the performance of such cable work while the crane is in the middle of the building and the other adjacent cranes are actively charging or drawing presents abnormal hazards. The reasons given were that there is much more vibration at this point and that blocks have in fact been dislodged or knocked out, and that the intercommunication stations are so located as to make visibility poor and their ability

to warn the other crane operators dubious. They asserted, moreover, that it was formerly the practice to perform such repair jobs only when the crane is at the end of the building.

Having held that the test when an employee requests relief from a job is whether he sincerely believes he is being exposed to dangers beyond those normal in his occupation, and not whether in fact the job is abnormally hazardous, on the evidence in this case it must be found that the asserted belief was genuine and not fabricated. Grievant has met the burden which is his in Article XI, Section 6. He did not simply rest on a naked or unsupported declaration that he believed the job abnormally unsafe.

Under this section of the Agreement Management was free to find no other work was available and to have sent grievant home. This could have been done on the day the incident occurred. Management went far beyond this, however, when it imposed a three-day disciplinary suspension on him and when it made this penalty a part of his personnel record.

AWARD

The grievance is sustained. Management shall pay grievant for the three days he was suspended and eliminate from his personnel record the disciplinary action report on this incident.

Dated: September 30, 1957

David L. Cole
Permanent Arbitrator