INLAND STEEL COMPANY )
) Grievance No. 19-F-13
- and - ) Docket No. IH-172-167-5/6/57
) Arbitration No. 224
UNITED STEELWORKERS OF AMERICA )
Local Union No. 1010 ) Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations
W.A. Dillon, Assistant Superintendent, Labor Relations
L. R. Mitchell, Divisional Supervisor, Labor Relations

For the Union:

Cecil Clifton, International Representative
J. Wolanin, Acting Chairman, Grievance Committee
J. O'Connor, Grievance Committee

S. Stasko, the grievant, was scheduled to work eight hours on Monday through Friday during the payroll week which began on Sunday, January 20, 1957. He worked eight hours on each of these days excepting Tuesday, January 22, 1957 when he reported for work one half-hour after his scheduled starting time, and, accordingly, worked only seven and one-half hours on that day. He was not scheduled for work on Saturday. He was scheduled for work, however, on Sunday, January 27, 1957 and worked eight hours for which the Company compensated him at the rate of time and one-tenth his regular rate.

He filed a timely claim for compensation at the rate of one and one-half times his regular rate for work on Sunday, January 27, 1957. The Company rejected this claim because he had not worked the first five days of the seven consecutive day period as required in Article VI Section 2 C (1) (d) of the August 1956 Agreement.

The cited provision (Marginal Paragraph 103) provides that overtime at the rate of one and one-half times the regular rate of pay shall be paid for

> "(d) Hours worked on the sixth or seventh workday of a 7-consecutive-day period during which the first five (5) days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as

> provided for in Subsection D of Section 1--Hours of Work; provided, however, that no overtime will be due under such circumstances unless the employee shall notify his foreman of a claim for overtime within a period of one week after such sixth or seventh day is worked; and provided further that on shift changes the 7-consecutive-day period of one hundred and sixty-eight (168) consecutive hours may become one hundred and fifty-two (152) consecutive hours depending upon the change in the shift. For the purposes of this Subsection C (1) (d) all working schedules now normally used in any department of any plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days' prior written notice thereof to the Company."

The Union claims that under the language of Marginal Paragraph 103 /"during which the first five (5) days were worked"/ the grievant, in fact, worked five days and that Marginal Paragraph 103 prescribes no formula for counting hours in determining whether a day was worked. To the extent that the number of hours may be relevant in determining whether overtime is payable under Marginal Paragraph 103, the Union refers to Article VI Section 2 B (2) (Marginal Paragraph 96) which reads

> "The workday for the purposes of this Section is the twenty-four (24) hour period beginning with the time the employee begins work except that a tardy employee's workday shall begin at the time it would have begun had he not been tardy."

The grievant, says the Union, falls squarely within the "except" clause. Having been tardy one-half hour, for the purposes of the section (which includes Marginal Paragraph 103) his workday started at the hour he was scheduled to report.

The Company sees the situation differently. It regards Marginal Paragraph 96 as having a purpose alien to that claimed by the Union. It argues that, but for the cited provision, an employee reporting tardily would be entitled to overtime on the day following because his regular starting time would occur less than 24 hours after his tardy appearance to begin work on the preceding day. The Company claims that it was never intended that Marginal Paragraph 96 would define a day of work for the purpose of Marginal Paragraph 103 and refers, instead to Article VI Section 1 B (Marginal Paragraph

87) providing

> "The normal workday shall be eight (8) hours of work in a twenty-four (24) hour period."

The grievant, having worked only seven and one-half hours on Tuesday, according to the Company, he did not work a "normal workday", and, accordingly did not work the first five days required by Marginal Paragraph 103 to have been worked if over-time pay is to be earned.

But Marginal Paragraph 103 does not require that a "normal workday" be worked -- it only requires that the first five days in a 7-consecutive day period "were worked". There is nothing in Marginal Paragraph 103 to indicate that "normal workday", (a specially defined term used in Section 1 of Article VI, which concerns itself with "Hours of Work" and scheduling procedures) was intended to control the interpretation and application of Section 2 which deals with "Overtime-Holidays". Indeed, the opening provision of Section 1 (Article VI Section 1 A; Marginal Paragraph 86) entitled "Scope", after providing that it defines the normal hours of work and stating that it is not to be construed as a work guarantee, most significantly provides that

> "This Section shall not be considered as any basis for the calculation or payment of overtime, which is covered solely by Section 2 -- Overtime - Holidays".

The parties, in the most explicit manner possible, have prohibited resort to Marginal Paragraph 87 for the purpose of ascertaining the meaning of Marginal Paragraph 103.

The Union did not dispute the Company's explanation of the significance of Marginal Paragraph 96 and the underlying purpose of that subsection to protect the Company from overtime premium claims for days following those on which an employee was tardy. But even if this was one of the reasons for the writing of Marginal Paragraph 96 which induced the Company negotiators to accept it for inclusion in the 1956 Agreement, this would not preclude the existence of other reasons which might have moved the Union negotiators to adopt it. The important feature is that the language itself is clear and unambiguous and does not need construction. It says, under the section heading "Overtime - Holidays" that the workday "for the purposes of this Section" - i.e., Section 2, is the 24 hour period beginning with the time the employee begins work, except that a tardy employee's workday shall begin at the time it would have begun had he not been tardy.

Marginal Paragraph 103 uses the word "workday" defined in Marginal Paragraph 96 when it refers to

> "Hours worked on the sixth or seventh workday of a 7-consecutive-day period * * *" (Underscoring supplied.)

Concededly it does not use that term in the rest of the sentence when it continues

> "* * * during which the first five (5) days were worked * * *" (Underscoring supplied.)

However, the definition of "workday" in Paragraph 96 having been declared to be "for the purposes of this Section", and the word "workday" and "worked" being cognate terms, I find that the meaning of "worked" in Marginal Paragraph 103 is controlled by the definition of "workday" in Marginal Paragrpah 96.

Accordingly, for the purposes of this case, when the grievant was tardy one-half hour on Tuesday, January 22, 1957, his workday for the purposes of Marginal Paragraph 103 is deemed to have begun at the time he was scheduled to report. In consequence of this, he is entitled to overtime pay for hours worked on the seventh workday of his 7-consecutive day period, the first five days thereof having been worked.

Two other matters require comment.

First, the Company pointed to the fact that Marginal Paragraph 102 dealing with overtime for hours worked on the sixth or seventh workday in a payroll week provides that

> "* * * for the purpose of determining whether work was performed on five (5) other workdays, any day on which an employee reports as scheduled and is prevented through no fault of his own from working his regularly scheduled eight (8) hour turn shall be counted as a day on which work was performed."

The Company's argument is this: that Paragraph 102 only protects an employee when he is prevented from working as scheduled due to no fault of his own, and, therefore, by implication, it is fatal to his claim that his failure to work was due to his own fault; that so far as the record discloses, the grievant's tardiness on Tuesday, January 22, 1957, was due to his own fault; that it was never intended to legislate diverse standards for Paragraphs 102 and 103, and, accordingly, if the grievant would be foreclosed from collecting overtime by reason of tardiness under Paragraph 102, he should be similarly foreclosed under Paragraph 103.

The state of the record in this case does not permit me to speculate why the language referred to was specifically set forth in Paragraph 102 and why it was omitted in Paragraph 103. When a contract provision is clear and not ambiguous, there is grave doubt whether the reasons behind the provision should be inquired into. Paragraph 103 stands on its own feet and is quite clear independently of the provisions of Paragraph 102, especially when read together with Paragraph 96 which explicitly states that it applies to all of Section 2. Accordingly, I am not persuaded that I may modify Paragraph 103 by incorporating language which the parties for some reason saw fit to include in Paragraph 102 and to omit from Paragraph 103.

Finally, the Union has referred me to Article VI Section 4 as relevant to the determination of the correct interpretation of Paragraph 103. Those provisions, in sum, authorize a foreman to assign a tardy employee (such as the grievant here) to his regular occupation, to a job in any other occupation in which work is available, or, if this course is not available, to send him home, in which case he is denied reporting pay. Thus, the Company is given the means of protecting itself from the pay consequences in situations where the tardiness is too great or occurs too frequently or commonly during the first five days "worked". The Company retains the right to make decisions to avoid unfair advantage to employees or unreasonable disadvantage to itself.

AWARD

The grievance is granted.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: December 27, 1957