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INLAND STEEL COMPANY )
) Grievance No. 15-F-13
- and - ) Docket No. IH-158-156-4/8/57
) Arbitration No. 227
UNITED STEELWORKERS OF AMERICA )
Local Union No. 1010 ) Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
T. G. Cure, Assistant Superintendent, Labor Relations
S. Riffle, Divisional Supervisor, Labor Relations
L. R. Mitchell, Divisional Supervisor, Labor Relations
Cy Walters, General Foreman, 44" Hot Strip

For the Union:

Cecil Clifton, International Representative
J. Wolanin, Acting Chairman, Grievance Committee
D. Blankenship, Grievance Committee

The grievance, filed by 52 employees in the 44" Hot Strip Rolling Mill, asks for compensation at the rate of one and one-half times the regular rate of pay for hours worked on the sixth and seventh workdays of a seven consecutive day period of work starting January 8, 1957 and ending January 14, 1957. The sixth andseventh days referred to are Sunday, January 13, 1957 and Monday, January 14, 1957. The provisions involved, quoted below, dealing with the scheduling of work and overtime pay, were new in the August 5, 1956 Agreement and have not previously been the subject of interpretation, in arbitration between these parties.

Article VI Section 1 C (1) provides as follows:

"C. Normal Work Pattern

"(1) The normal work pattern shall be five (5) consecutive workdays beginning on the first day of any 7-consecutive_day period. The 7-consecutive_day period is a period of one hundred and sixty-eight (168) consecutive

hours and may begin on any day of the calendar week and extend into the next calendar week. On shift changes, the 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." (Marginal Paragraph 88).

Article VI Section 2 C provides as follows:

"C. Conditions Under Which Overtime Rates Shall be Paid

"(1) 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." (Marginal Paragraph 103.)

The grievants were all members of an "A" or a "B" crew the schedule for which was expressed as follows by the Company in its pre-hearing brief:

| | 1/6 S | 1/7 M | 1/8 T | 1/9 W | 1/10 Th. | 1/11 F | 1/12 S | 1/13 S | 1/14 M | 1/15 T | 1/16 W | 1/17 Th. | 1/18 F | 1/19 S |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/7 | O | O | A | A | A | A | A | A | C | C | C | C | C | O |
| 7/3 | O | O | B | B | B | B | B | O | A | A | A | A | A | O |
| 3/11 | O | C | C | C | C | C | C | B | B | B | B | B | B | O |

Although this was the general crew schedule it is evident that there were individual variations from the scheduling assignments recorded. Significant factors in this crew schedule are the following:

1) In the middle of this two week period there was a Sunday during which one turn (7 A.M. - 3 P.M.) was down.

2) The members of the A and B crews were scheduled for (and worked) 5 consecutive days prior to 12:01 A.M. on Sunday, January 13, when the new payroll week commenced.

The Union claims that work by any of the grievants on Sunday, January 13 or Monday, January 14 was in 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" and, accordingly, is to be compensated at premium rates.

The Company, however, denies premium pay liability on the basis of the next to last sentence in Marginal Paragraph 103. It states that the schedule pursuant to which grievants worked was "normally used" in the department and therefore "shall be deemed to have been approved".

Basically the issue here is whether the schedule worked was "normally used" within the meaning of Marginal Paragraph 103. The paragraph provides for the procedure of withdrawal of "approval" of a schedule by the grievance committeeman of the department upon 60 days written notice; but no such withdrawal of approval occurred here. In the absence of such formal withdrawal of approval it is necessary to ascertain whether the presumption of approval in the Agreement ("deemed to have been approved") has validity.

The Company places emphasis upon the Agreement's plural reference to

> "all working schedules now normally used in any department of any plant" (Underscoring supplied.)

as being deemed to have been approved. In the face of the Union's argument that in the 44" Hot Strip there was a diversity of schedules and patterns of assignment of turns to work precluding any determination of what is "normal" and therefore "approved", the Company contends this: that the schedule under discussion was used whenever, in a 7 or more consecutive day cycle of work, there was only one down turn (on the 7-3 turn) on Sunday. Thus, the Company concedes that a varied assortment of schedules were employed in the plant and the department, depending upon business and operating conditions -- but that the schedule used when the only down turn in an extended cycle of work was 7-3 on Sunday, was the schedule involved in this case; and that this schedule is therefore the one "normally used" in the department.

The hearing in this case resolved itself primarily into a consideration of the past scheduling practices of the Company in order to asxertain whether the facts would sustain the Company's contention that the schedule in question was normally used. No point would be served by setting forth here in detail the instances and occasions on which, in the period January 1950 - April, 1955 (covered in Union's Exhibit No. 1) such a schedule appears to have been followed. Suffice it to say that there were a number of such instances; as, indeed, there were schedules of a different kind with a varying number of down turns on Sundays on the 8 - 4 turn and on other days and turns.

The Union argues that those instances and occasions shed no light on the question whether this schedule was one "normally used" because prior to August 6, 1956, the payroll week started with 12:01 A.M. on Monday, and fulfilling the schedule had different overtime pay consequences than it would have under the current provisions of the Agreement providing for a payroll week starting 12:01 A.M. on Sunday. It appears to me, however, that the provisions of the Agreement compel an inquiry as to the work schedules normally used and not as to the pay consequences of various scheduling practices and whatever might have motivated the Company to schedule in one way or another in the past. Accordingly, I am disposed to agree with the Company in regarding the instances of scheduling in the period January, 1950 - April, 1955, such as is involved in this grievance, as relevant to the inquiry; however, there is some doubt as to the weight to be given to this evidence in view of the language of Marginal Paragraph 103 which refers to schedules "now normally used". (Underscoring supplied.)

The Company supplemented this evidence with Company Exhibit E showing the work patterns of seven of the grievants on 9 separate schedules in June, July, August, September and December, 1955. Each schedule presented an instance of an in-

dividual schedule when one turn was down on Sunday and the employee worked six or seven days across a payroll period. In its Exhibit B the Company also showed additional instances of the type of scheduling under discussion In January and February, 1956, each case presenting one down turn on the 7 - 3 shift on Sunday and six or seven days of work across a payroll week. In compliance with my request, made at the hearing, the Company also presented a record of the individual records of a number of employees in the mill showing that the schedules were adjusted and worked as testified to by Company witnesses under the special circumstances described.

The evidence in the record dispels any doubts that under the circumstance of only one down turn in a week on the 7 - 3 Sunday turn the Company, in fact, on numerous occasions scheduled A and B crews for six or seven days across a payroll week. It scheduled employees otherwise under other conditions -- but does resort to other schedules signify that the schedule in question was not normally used? "Normally" does not mean exclusively; it may not even require usage in the preponderance or the majority of all possible occasions. The Company quite properly observes that the Agreement refers to "all working schedules now normally used in any department" (Underscoring supplied) and thereby indicates that a number or variety of schedules resorted to in any department may be regarded as coming within the scope of schedules "normally used", and, therefore, approved. It seems evident that the work pattern under discussion was not only a way of scheduling but the regular and the customary way of scheduling when the mill was to be operated over an extended period with only one 7 - 3 Sunday turn down. Accordingly I find that it was a schedule normally used under the stated circumstances.

The Union argues that this result is contrary to the intention which underlay the provisions quoted. That intention is stated to have been to discourage, by the requirement of overtime pay, the scheduling of employees for long cycles of work on consecutive days. To permit the Company to schedule as it did in this case, it says, without penalty, is to encourage just such practices as it was the purpose of the cited provisionsto prevent.

It is appropriate to inquire into the contentions of the parties when the language they employed is imprecise in meaning and, manifestly is an inadequate instrumentality to express those intentions. A search for the objective of the parties, however, is not called for here where the contract provisions are unambiguous. It is the duty of an Arbitrator, in such case, to be guided by the language of the Agreement. Particularly, should this be the case were, as here, they provide specifically for a procedure by means of which the Union is enabled to withdraw protected and approved status from a schedule "normally used". Conceivably, there may be

some differences of opinion, as in this case, whether a particular schedule falls within the approved category. In such a situation the Union has readily at hand the means by which it can accomplish what it conceives to have been the intentions of the parties with respect to the obligation to compensate for the sixth or seventh day worked in the course of a payroll period following one in which five days had been worked. It may grieve and seek to establish the fact that the schedule had not been "normally used" and it may also, immediately, withdraw approval, as provided.

These considerations, in sum, persuade me to find that the schedule under discussion having been "normally used" in such circumstances as have been described, it was an approved schedule within the meaning of Marginal Paragraph 103. Accordingly, those employees among the grievants who were scheduled to and did work on Sunday, January 13, or on Monday, January 14, 1957, after having worked five days in the payroll period commencing January 6 are not entitled to overtime pay for hours worked on such days pursuant to the provisions of Article VI, Section 2, (Marginal Paragraph 103).

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: December 27, 1957