INLAND STEEL CONTAINER COMPANY (New Orleans, Louisiana Plant)	)	Grievance Nos. 1 and 2
	)	Docket Nos. SC-NO 163-1-1/21/57
- and -	)	SC-NO 164-2-1/23/57
	)	Arbitration No. 231
UNITED STEELWORKERS OF AMERICA Local Union No. 2179	)	Opinion and Award

Appearances:

For the Union:

Warren V. Morel, International Staff Representative
Richard E. Davidson, International Staff Representative

For the Company:

William F. Price, Attorney
Thomas Dwyer, Local Plant Manager

On January 15, 1957 Warren Griffin, a Stocker and Lift Truck Operator, and George Griffin, a Car-Loader, who had been assigned temporarily to fill in as Shipping and Receiving Clerk, (a job regularly occupied by Alvin Louviere who was absent) were instructed by their foreman not to report for work on January 16, 1957. Louviere, who returned on January 17, 1957, was instructed by his foreman on January 21, 1957 not to report for work on January 22, 1957. In Grievance No. 1 Warren and George Griffin claimed a violation of the Agreement and asked to be reimbursed for the pay they lost on January 16, 1957; in Grievance No. 2 Louviere made a similar claim and requested reimbursement for January 22, 1957. Because these two grievances involve similar facts and questions of contract interpretation they will be treated in one opinion and award.

The grievance notice in Grievance No. 1 reads as follows:

> "On Wednesday, January 16, we were laid off yet we find that the duties of our jobs, receiving freight shipments and unloading them from draymen by using the lift trucks were performed by someone else, and therefore we are grieving for eight hours pay for that day."

The grievance notice in Grievance No. 2 reads as follows:

> "I was told by my Foreman, J. Bush not to report for work on January 22, 1957. Upon being called back to work January 23, I found that freight had been received all day on the 22nd and that two non-union men had signed for that freight. Being shipping and receiving clerk I think I should have been called in to receive that freight.
>
> "I file this grievance for eight hours pay at my regular rate."

The background facts in the record are as follows: Eighty to eighty-five percent of the Company's production, in accordance with customer orders are delivered by trucks operated by a trucking company with which the International Union had a dispute in January, 1957. A few days before January 16, 1957 the Local Union informed the Company that it would not load the products of the Company on any equipment of the trucking company. Several meetings were held between Company and Local Union representatives but they failed to develop any solution of the shipment problem.

In 1955 the production employees averaged about 29 hours of work a week and in 1956 about 31 hours of work. There were some employees, however, including the Stocker and the Shipping and Receiving Clerk (hereinafter called the Clerk) who averaged close to 40 hours of work a week. The Company claims that such work was irregular, as to hours and schedules, but that in the interest of preventing manpower turnover in certain non-production jobs that might be relatively difficult to fill it has been its policy to furnish as much extra work as possible to such employees in order to enable them to approximate a 40 hour week. The Union, however, emphasizes the point that some of such employees (Louviere, the regular Clerk, and Burns, the Painter-Leaderman, who was a witness) were <u>never</u> laid off even when the production lines were down. Warren Griffin, the Stocker, testified that he could recall only three or four occasions in the last nine years when he had not been scheduled for work.

On January 16, 1957 only eight maintenance employees were scheduled to work. The production employees, the Stocker and the Clerk were scheduled off. The record discloses that although on some occasions the Company officials had advance knowledge of what shipments might be received, it had no knowledge of any particular shipments due for delivery on that day. However, during the absence of the Stocker and the Clerk there was received on January 16, 50 pieces of ribbed glass in two or three containers, one small punch button lock, two five gallon pails of paint, three pieces of 20 foot angle iron, one scale weighing approximately 20 pounds and five drums of paint. A maintenance employee

in the bargaining unit used the lift truck ordinarily operated by the absent Stocker to lift the drums of paint off the truck, placed them on a pallet and set the pallet on the floor. It is stated that this operation, the only one that would have been performed by the Stocker, had he been present, took not more than ten or fifteen minutes.

The principal function of the Stocker is supplying the production line with steel. He also unloads and inspects sheet steel. Other unloading is stated to be only an incidental part of his duties; and he appears to have been engaged therein only sporadically as necessary. Other employees also use the lift truck but in connection with the performance of functions not material here.

With the production lines scheduled to be down on January 16 and no steel scheduled to be received on that day the only duties the Stocker was likely to be called upon to perform on January 16 were of an incidental character, contingent upon the occurence of events that could not be foreseen with confidence. It is clear that the maintenance employee referred to did Stocker's work when he removed the drums of paint from the truck with the lift press -- but the record demonstrates no other claimed transgression of his work jurisdiction.

The principal duties of the Clerk are the counting, checking and inspection of incoming and outgoing materials. He signs and verifies the number of containers listed on the delivery ticket of the trucker who brings material into the plant. At the time of receipt he does not count or check the items or units within the containers or inspect them. He performs no receiving functions with respect to sheet steel as to which the Stocker has primary responsibilities.

Due to the position of the Union that it would not load the equipment of the trucker with which it had a dispute there were no outgoing shipments contemplated or effected on either January 16, the day on which George Griffin, the temporary Clerk, was scheduled off, or on January 22 when Louviere, the regular Clerk, was scheduled off. There were incoming shipments on January 16 as stated above. In each instance of materials received on that date, the Production Foreman, the Maintenance Foreman or the Stock and Inventory Clerk, none of whom are in the bargaining unit, verified the number of containers and the color of the materials delivered and signed the delivery ticket -- a procedure alleged to consume about 30 seconds for each of the six deliveries.

On January 22, 1957 Warren Griffin (the Stocker) and Louviere (the regular Clerk) were both scheduled off. An unexpected shipment of steel arrived at the plant, not by barge, as is customary, but by rail and truck. The Company called out the Stocker to unload the steel and, accordingly, he reported at 9:30 a.m. instead of 7 a.m., the usual start of his shift.

In addition to this unexpected shipment, as to which the Clerk had no duties to perform, there were received on that day 15 lengths of angle iron, two containers of bolts and nuts, two rubber hand stamps, three drums of paint, two five-gallon pails of paint, one carton of office supplies, three bundles of cloth towels, four boxes of work gloves and several pieces of electrical circuit. None of these items were scheduled for delivery on that day, although it was testified that it is unusual for a day to pass without some receipts of materials. In each case the color and quantity check was made by non-bargaining unit employees and the delivery tickets signed as in the case of the materials received on January 16. After the color and quantity verification had been made and the delivery tickets signed on January 16 and January 22, the tickets were left on the Clerk's desk for further processing which included verification of the quantities within containers, inspection for damage, etc. In each case this work was done on the following day.

The signing of the trucker's receipt and the color and item count (such as were performed on January 16 and January 22) had customarily been performed by one or another of the non-bargaining unit employees on occasions when the Clerk had left for the day, or if at the plant, was not immediately available in the area where materials were being delivered. The Union has permitted this to be done by non-bargaining unit employees as a matter of mutual convenience and because of the practical necessities of the situation. The Union made it plain that it was not its purpose to disturb this arrangement, nor did its case rest solely on the fact that, on the dates mentioned, non-bargaining unit employees had performed work customarily done by the grievants. It pointed out that the factor that distinguished the circumstances in the past (when the production line was down) from those on January 16 and January 22 is that on those days, contrary to practice, the Stocker and the Clerk were not scheduled to work. The Clerk testified that January 22 was the first day on which he had been scheduled off since he went on the job.

The Union made it clear that it did not claim any violation of a guarantee of 40 hours of work for the employees involved. According to its presentation, it would refrain from filing a grievance if the Company had failed to schedule these grievants for work because it expected to receive only a shipment of trivial or insignificant quantity or value. Its argument was based on the proposition, rather, that as a fact, the Stocker and Clerk were scheduled regularly in the past and, therefore, should have been scheduled for work on the days in question. This, of course, standing alone, is tantamount to asserting that a 40 hour work guarantee existed for these employees despite the Union's protestation that it does not advance that argument. The Union goes further, and asserts that the three men were discriminated against because they are Local Union officials and active members of its Grievance Committee.

The Company protested the reception of any argument as to discrimination on the ground that it had not been asserted until the arbitration step and that no reference had been made to it either in the grievance notices or in the steps of the grievance procedures. The Union offered no testimony contradicting this observation.

The understandings pursuant to which arbitration is carried on by the parent Company and the Union prohibit the Local Union at this late date, to introduce the argument based on discrimination. The objections of the Company thereto were overruled at the hearing because of the possibility that such rules might not have been sufficiently communicated to the Local Union or to the International Staff Representative presenting its case. However, although no bar to testimony by Union witnesses on that subject was interposed, a careful inspection of the record reveals that it is devoid of facts which would support any finding of discrimination.

The announced refusal of the local union to load the equipment of the contract trucker created a difficult shipping and receiving problem for the Company. In view of the fact that only an insignificant proportion of the product is warehoused and is customarily loaded directly on trucks or railroad cars from the production lines, it had no alternative but to schedule off all production employees on January 16. The Union conceded that the Company sought alternative expedients for shipping by truck. The Plant Manager testified that the Company's efforts were expended in seeking to induce customers to accept rail shipments, and, furthermore, in the following days, until the end of the trucker's dispute, it tried to accumulate orders for rail shipments so as to keep the plant running. In addition, because the plant was not normally on a regular 40 hour week, and excepting for maintenance work, only incidental, insignificant and unanticipated contingent duties would be performed on January 16, considerations of economy and efficiency dictated layoffs for the two occupations involved here.

The Company's efforts to shift to rail shipments were sufficiently successful to warrant some rescheduling of production employees in days subsequent to January 16 but not to an extent sufficient to enable it to anticipate that work would be available for the Stocker and the Clerk on January 22. It is perhaps significant that after having scheduled the Stocker off for January 22, when an unanticipated shipment of steel arrived on that day, it recalled him 2 1/2 hours after his regular starting time. Thus, when it became evident that work was available for the Stocker, he was in fact called to work even though not scheduled for it in advance. This was hardly consistent with any motivation to discriminate. The unanticipated steel shipment, of course, did not require any work to be performed by the Clerk and except for the six truck deliveries of materials received, there was no work available for him on January 22.

There is presented in these grievances two types of situations: a) lift truck work done on January 16 by a maintenance man in the bargaining unit, senior to the Stocker in service, which was normally a part of the incidental duties of the Stocker; and, b) general checking and delivery ticket signing performed by the non-bargaining unit employees with respect to incoming truck shipments of materials (other than steel) which had customarily been performed by these individuals in the past on occasions when the Clerk had gone home for the day or, if at the plant, was otherwise engaged.

In both of these situations the Company took reasonable steps to meet production, scheduling, and receiving problems resulting from the union-carrier dispute in which it was not a participant. In both situations the Company acted under its reserved rights to

> "relieve employees from duty because of lack of work or other reasonable causes." (Article III, Section 6)

No specific provision of the Agreement has been cited, the violation of which is claimed, prohibiting the utilization of the lift-truck by the maintenance employees to perform minor work like removing a few drums of paint. It is not necessary in this case to determine whether the Company has the authority to assign duties regularly performed by the Stocker to another employee. It is sufficient to point out that even assuming that this right is questionable, the special circumstances under which the maintenance employee operated the lift truck were not such as to entitle the Stocker to a day's pay.

With respect to "b)", the second situation identified above, the Union invoked Article VI Section 6 which provides that

> "Employees excluded from the bargaining units covered by this Agreement shall not perform work consistently performed by the employees covered hereby except for the purpose of instruction or in the case of emergency or when regular employees are not immediately available."

The verification of the color and number of containers on the trucks and the signing of the delivery tickets which the non-bargaining unit employees did on January 16 and January 22 was neither more nor different from what they had regularly done in the past when the Clerk was not available. The unavailability of the Clerk on those two days, it is true, was due to the fact that he had not been scheduled for work. The Union's argument, accordingly, has validity only if the lay-offs were wrongful and in violation of the provisions of the Agreement.

I do not so find. The scheduling-off of the Clerks on the days mentioned constituted a reasonable and rational response by the Company to the challenge of the shipping and receiving and other management problems resulting from the Union's dispute with the carrier. The fact that, under other circumstances in the past, the Stocker and the Clerk were called in for work when others were laid off does not mean that the Company has abandoned or ceded its right to lay-off when it has a reasonable ground for believing, as I find it did, that work would not be available for the Stocker and the Clerk. The Company cannot be required to schedule shipping and receiving personnel on the theory that there is a possibility that someone might send a truck shipment of materials on the next day which might call for a trivial amount of work. Especially, is this so where the duties of the Clerk with respect to such shipments can be performed, in their most important aspects, on the following day. If this were the first time the Clerk had been laid off, it should be observed that it was also the first time that the Company had been faced with the special problems presented by the Union's refusal to load the carrier's trucks. This was the first time that it was faced with the special shipping and receiving situation described above.

On the entire record I find no basis for allowance of the grievance.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: February 5, 1958