INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 16-F-26
Docket No. IH-201-196-7/30/57
Arbitration No. 233

Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
R. L. Williams, General Foreman, Mechanical Division, Cold Strip Dept.
M. S. Riffle, Divisional Supervisor, Labor Relations

For the Union:

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

This grievance challenges the Company's right to reassign a 2nd Class Millwright from a steady day job in the Pickle House, Cold Strip Department, to another job within the same classification, sequence and department. The objection is that the new assignment is a rotating shift job, and the Union asserts that this deprives the grievant of the benefits of Article XIV, Section 5, the local conditions and practices provision of the Agreement, on the ground that it has been an established practice for older employees in the Mechanical Sequence to have the right to select steady day jobs.

This dispute is similar to that considered in Grievance 16-F-83, which resulted in the next award in this series. It was agreed at the hearings that the evidence and arguments in the two cases should be deemed applicable to both.

Article XIV, Section 5 provides:

> "This Agreement shall not be deemed to deprive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect at the time it is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

It is contended by the Company that:

> "1. The Seniority provisions of Article VII of the Collective Bargaining Agreement do not permit employees to pick job assignments within a given occupation which constitutes a single step of a sequence on the basis of sequential seniority standing.

"2. There is no past practice under which employees in the Cold Strip Mechanical Sequence have been given the absolute right to pick and remain on their job assignments within their occupation on the basis of their sequential seniority standing.

"3. If the practice alleged by the Union did exist, such practice would clearly be inconsistent with the provisions of Article VII and Article IV, Section 1 of the Collective Bargaining Agreement and would not be the type of practice continued in effect by the provisions of Article XIV, Section 5 of the Collective Bargaining Agreement."

The Union does not question the Company's normal right to assign an employee to whatever job it deems necessary within his classification and sequence, under Management's general rights to manage as set forth in Article IV, Section 1, but the Union insists this is expressly made subject to other provisions of the Agreement by the introductory clause: "Except as limited by the provisions of this Agreement." The effect, as the Union sees it, is to restrict the Company's freedom of assignment of jobs to the extent that Article XIV, Section 5, constitutes a restriction.

If in fact there was a local condition or practice within the contemplation of Article XIV, Section 5, in effect when the Agreement was executed then this would have priority over the general management provision because that very provision stipulates that it is subject to other parts of the Agreement. The questions then are: (1) was there as of August 5, 1956 a local condition or practice giving employees situated similarly to the grievant the right on the basis of seniority to select specific job assignments; (2) if so, was this the kind of local condition or practice protected by Article XIV, Section 5? The latter question would depend on the answer to this: is such a condition or practice consistent with the Agreement, specifically with the detailed seniority provisions of Article VII?

Article VII contains some 60 paragraphs in which in great detail the seniority rights and procedures are spelled out. The seniority rights relate to promotions, job security, and reinstatement after layoffs, and all the incidental and necessary mechanics. Job assignments within an occupation or job or shift preferences are not provided for in Article VII. This means that in this case, and in Grievance 16-F-83 as well, the charge that the Company is in violation of Article VII in not respecting employees' job preferences is without foundation.

The more pointed question is whether a catch-all provision that the "Agreement shall not be deemed to deprive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect ... more beneficial to the employees than the terms and conditions of this Agreement" (Article XIV, Section 5) can be used to alter any of the basic rights or procedures of the detailed article covering seniority.

Article VII is not excluded from the provisions of Article XIV, Section 5, but what may be said to be consistent with it is a difficult matter. When one group of employees claim additional seniority benefits, this claim is not one directed solely at the Company. Greater seniority benefits to one group of employees necessarily means lesser seniority benefits to other employees. If, therefore, the additional benefits sought would enlarge either promotions, job security or reinstatement rights (matters directly covered by Article VII), such additional benefits would have to be held to be inconsistent with this article and not within the purview of the local conditions section.

By the same token, however, a local condition or practice in effect when the Agreement was made concerning job preference benefits could be enforced as not inconsistent with Article VII. This is obviously because Article VII has no provisions one way or the other with respect to such seniority rights, and the most that could be said is that such rights would be "more beneficial to the employees," to use the language of the Agreement.

The basic issue in this case, then, relates to the facts. Was there in effect as of August 5, 1956, when the Agreement was executed, a local condition or practice under which Millwrights in the Mechanical Sequence in the Cold Strip Mill could on the basis of length of service select their jobs or shifts? Normally, the Union concedes, it is Management's function and clear right to assign employees to jobs within the occupation or classification, and Management's judgment in this regard may not be questioned.

The grievant, H. Gingrey, a 3rd Class Millwright, bid for a vacancy as a 2nd Class Millwright in the Pickle House in January, 1955, and was awarded a job in the Die Crew on February 11, 1955. This was a day job. He remained on this job until December 16, 1956, when he was assigned to a rotating shift 2nd Class Millwright job in the Pickle House, and this brought on this grievance, Gingrey asserting that his seniority rights entitled him to a day job.

The Company disputes his claim that any such local condition or practice existed. It admits that Millwrights have expressed job preferences and that when it met the Company's needs and convenience to do so such preferences have from time to time been respected, but it strongly insists that this has been a matter of discretion with supervision, and that many times employees have been denied such requests.

It was shown at the hearing that day jobs have been filled by employees who were being promoted into the occupation while others with greater length of service were left on their old jobs despite their requests to be given the day job. It was also proved that Millwrights with less service have been given such assignments while requests of older men were outstanding. Three grievances were filed on this score, two in 1951 and one in 1952. All were rejected by the Company on the ground that it was under no obligation to grant job or shift preference requests, despite the provisions of Article XIV, Section 5, or its exact prototypes in earlier Agreements, and none of these grievances were processed beyond Step 2 by

the Union. In each instance Management explained its freedom to make job assignments in accordance with its practical needs, although it told the employees that under favorable circumstances it would like to accommodate the individual employees and would do so when the proper opportunity presented itself. One of the Union officials testified in essence to the same effect.

The most that can be found, therefore, is that there was a local practice to give favorable consideration to employees' job preferences based on their length of service unless Management had some valid reason for denying or delaying such requests. Such reasons have been practical in nature. A well-balanced work force on each shift or job has been one of the principal reasons; the need to have adequate training opportunities in anticipation of the Company's requirements has been another.

In this case, Gingrey had filed a waiver of promotion on May 12, 1956. The 1st Class Millwright in his Die Crew was a 63 year old man not in good health, who was scheduled to retire in August, 1958. When he was absent because of sickness the Company had to assign someone from another gang to fill in for him because of grievant's desire to remain a 2nd Class Millwright. Under these circumstances Management deemed it wise to assign some other 2nd Class Millwright to this Die Crew in order to train him for possible promotion and to have him available to fill in on a temporary basis. It was not until February 24, 1957, almost two months after the grievance was filed, that grievant withdrew his waiver of promotion.

It appears, then, that the Company has repeatedly disputed the existence of the local practice relied on by the Union in this grievance; that, on all the evidence, it gave favorable consideration to job or shift preference requests of employees in line with their length of service only when it was practical and convenient to do so, and that in this instance it was entirely reasonable in holding that it was not practical to do so. Consequently, the underlying fact on which the grievance must rest is lacking.

AWARD

This grievance is denied.

Dated: February 10, 1958

David L. Cole
Permanent Arbitrator