INLAND STEEL COMPANY	)	
	)	Grievance No. 16-F-59
- and -	)	Docket No. 191-186-6/13/57
	)	Arbitration No. 242
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Wage Rate & Incentive Review Committee
J. Wolanin, Acting Chairman, Grievance Committee
J. Sargent, Grievance Committeeman

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
M. Riffle, Divisional Supervisor, Labor Relations

H. Wilmot, the grievant, after being scheduled on Thursday to work the following week starting with Sunday on the 7:30 - 3:30 turn, was given notice to appear for work on the 3:30 - 11:30 turn on Sunday instead of the 7:30 - 3:30 turn. He worked on Sunday as instructed, was off on Monday and Tuesday, and worked Wednesday, Thursday, Friday and Saturday on the 7:30 - 3:30 turn, as scheduled.

The grievance filed on March 27, 1957 requests that

> "these schedule changes stop, and that Wilmot be paid time and one-half as provided for in Contract."

Violation is charged of "Article VI Section D". The prehearing statement of the Union which frames the issue for the hearing reads as follows:

> "The issue to be decided is whether the Company by changing the aggrieved employee's schedule from the 8 - 4 to the 4 - 12 turn on Sunday, March 24, was in violation of Article VI, Section 1-D-3, and whether or not the change in schedule requires payment

of time and one half for the 6th or 7th day worked under the provisions of Article VI, Section 2, paragraph 1-D-4 of the Agreement."1/

Thus, this case presents two questions: 1) whether the Company violated the Agreement in scheduling the grievant as it did; and, 2) if a violation is found to have occurred, the appropriate relief therefor. Two kinds of relief are requested: a) a prohibition against future violations of a similar character; and, b) the payment of premium pay to the grievant. These matters will be discussed in this order.

Article VI Section 1 D (Schedules) provides as follows:

"(1) All employees shall be scheduled on the basis of the normal work pattern except where: (a) such schedules regularly would require the payment of overtime; (b) deviations from the normal work pattern are necessary because of breakdowns or other matters beyond the control of the Company; or (c) schedules deviating from the normal work pattern are established by agreement between the Company and the grievance committeeman of the department involved." /Marginal Paragraph 90/

"(2) Schedules showing employees' workdays shall be posted or otherwise made known to employees in accordance with prevailing practices but not later than Thursday of the week preceding the calendar week in which the schedule becomes effective unless otherwise provided by local agreement." /Marginal Paragraph 91/

"(3) Schedules may be changed by the Company at any time except where by local agreement schedules are not to be changed in the absence of mutual agreement; provided, however, that any changes made after Thursday of the week preceding the calendar week in which the changes are to be effective shall be explained at the earliest practicable time to the grievance or

1/ In view of the discussion at the hearing it is believed that the last citation is intended to be Article VI Section 1 D (4).

> assistant grievance committeeman of the department involved; and provided further that, with respect to any such schedules, no changes shall be made after Thursday except for breakdowns or other matters beyond the control of the Company." [Marginal Paragraph 92]
>
> "(4) Should changes be made in schedules contrary to the provisions of Paragraph (3) above so that an employee is laid off on any day within the five (5) scheduled days and is required to work on what would otherwise have been the sixth or seventh workday in the schedule on which he was scheduled to commence work, the employee shall be paid for such sixth or seventh day worked at overtime rates in accordance with Section 2 -- Overtime - Holidays." [Marginal Paragraph 93]

The Union points out (and the Company does not deny) that the change from the schedule posted on the previous Thursday was not dictated by

> "breakdowns or other matters beyond the control of the Company"

such as are referred to in the last portion of Marginal Paragraph 92. The Company makes no claim other than that the change was required by the circumstance that there was a considerable amount of maintenance work to be performed in the Pickle House during the weekend; that although 19 millwrights were available for the Sunday 7:30 to 3:30 turn and but two cranes were available, only three millwrights were to be on hand for the 3:30 to 11:30 turn. Hence, for the purpose of assuring crews of at least two millwrights for each crane on each turn, the grievant was transferred to the afternoon shift.

This explains the change in schedule but the question persists whether such a change, following the previous Thursday's posting, was permissible under the Agreement. The Union claims that a transfer from one turn to another on the same day, contrary to the posted schedule, is prohibited and if effected, results in overtime pay obligations; the Company claims that a change to a turn in the same calendar day is not prohibited by the Agreement and calls for no premium pay.

Marginal Paragraph 92 states, for the purposes of this case, that schedules may be changed "at any time" * * * "provided further that, with respect to any such schedules, no changes

shall be made after Thursday" except for stated reasons not applicable here. The Company claims that Marginal Paragraph 93 when read together with Marginal Paragrpah 92 sheds light on the meaning of the latter paragraph insofar as the issue in this case is concerned. Paragraph 93 says that should a change contrary to Paragraph 92 be made, with the consequence that an employee is "laid off on any day within the five (5) scheduled days" and would be required to work on the sixth or seventh workday of the scheduled workweek posted the previous Thursday, he shall be paid therefore at overtime rates. (This overtime obligation is also expressed in Marginal Paragrpah 104 through an incorporation by reference of Marginal Paragraph 93.)

According to this analysis, it is only when the change in schedule results in a "layoff" of a day and the requirement that the sixth or seventh day in the posted schedule be worked that the change has overtime premium pay consequences and is proscribed by Marginal Paragraph 92. There was no such "layoff" in this case; neither was the grievant required to work on what was scheduled as his sixth or seventh day. There was only a substitution of one turn for another on Sunday, March 24.

The introductory language in Marginal Paragrpah 93 provides:

> "Should changes be made in schedule contrary to the provisions of Paragraph (3) above * * *"

A close reading of Marginal Paragraph 92 and 93 indicates that the parties in Marginal Paragraph 92 addressed themselves directly and in full to the situation when schedules posted the previous Thursday (in conformity with Marginal Paragraph 91) might or might not be changed. Marginal Paragraph 93 addresses itself to relief under described conditions where schedule changes are made and sheds little light by itself on the basic right, under Marginal 92, as to when schedule changes may be made.

Marginal Paragraph 92 reveals no language declaring with explicitness or authority whether a change of turn or of hours of work in a work day constitutes a prohibited change of schedule. It states that

> "with respect to any such schedules, no change shall be made after Thursday * * *" (Underscoring supplied.)

Thus, Marginal Paragrpah 92 by itself, does not illuminate the meaning and content of "such schedules", and in order to determine what schedules are meant we must examine Marginal Paragraph 91, immediately preceding. In connection with the requirement of Thursday postings that provision says that

"Schedules showing employees' workdays shall be posted* * * *." (Underscoring supplied.)

This language, standing alone, would seem to impose no requirement for the posting of turns or hours: nor is there any mandate in any other provision of the contract that turns or hours on a workday be posted. Accordingly, it would seem that a change of turns or hourswithin a "workday" would not constitute a violation of Marginal Paragraph 92. Marginal Paragraph 87 refers to a "normal workday" (underscoring supplied) as eight hours of work in a 24 hour period, but the issue in this case does not turn on the concept of "normal workday" because the grievant here did not work more than eight hours in a 24 hour period. Further, Marginal Paragrpah 90 states that employees shall be scheduled on the basis of the "normal work pattern"; but aside from the fact that Marginal Paragraph 88 defining that term declares that the normal work pattern shall be five consecutive "workdays" etc., there is no help in interpretation from this quarter.

The Union contests this view that Marginal Paragraph 91 in its reference to "workdays" does not require schedules of turns or hours to be included in the Thursday postings and, therefore, that a change of hours or turns in a day does not violate Marginal Paragraph 92. It argues that a failure to show up for work on the posted turn and the posted hour has disciplinary and wage consequences, and if this be so, the turn or the hour must be an integral part of the schedule of the "workday."

In support of this contention it submits an award of the Tri-Partite Board of Arbitration (Sidney L. Cahn, Chairman) in a case involving Jones and Laughlin Steel Corporation (Docket No. 45-C-54; J. and L. No. 10-239; Union No. SS 9-18-55) handed down February 9, 1956.

In the cited case the grievant had been given prior notice of a change in the schedule and was instructed, as in this case, to report on the afternoon shift rather than on his previously scheduled morning shift. Contrary to these instructions, (and unlike the situation presented in this case) he reported for work on the morning shift and was told to report back for work at 4 P.M., which he did. The award in the case granted him four hours of pay under the reporting pay provisions of the agreement. The case is distinguishible from that under consideration on its facts and on those issues relating to reporting pay, but clearly, in the course of reaching its conclusion the Board dealt directly with, and reacted favorably to, the argument raised by the Union here.

In the Jones and Laughlin Case, the Company argued that a contractual requirement that a schedule of "workdays" be posted does not call for the posting of shifts.

The Board's answer (p. 3389) to this contention was:

> "Such line of reasoning, however, overlooks the fact that Section 10 in defining normal hours of work states that a normal workday is one 'comprising eight consecutive hours of work and 16 consecutive hours of rest'. Furthermore, while Section 10B makes no express reference to an employee's shift but merely speaks of 'workdays' of employees, the practical necessities of Plant operation would require that an employee know the time he is to report to work and that the Company know the time it can expect him to be on hand. This Section of the Agreement must be presumed to have been inserted therein by the parties with full realization of such practical necessities, and we may only give proper effect to such realization by our construing the word 'schedule' itself as embracing specific hours as well as days of work."

With all respect for the Board and its reasoning in that case, it cannot be followed here. One might readily concede that there are "practical necessities", of concern to the parties, that an employee know his turn and starting time and yet reach a contrary conclusion from that reached in the Jones and Laughlin Case upon the plain words which these parties inserted in their agreement. When Marginal Paragraph 91 states that

> "Schedules showing employees' workdays shall be posted * * *" (Underscoring supplied.)

and in no other provision of the Agreement is it stated that "workday" means the starting hour and the turn, it requires a departure from contractual language and the interpolation of material not presently included to reach the result sought by the Union.

There are diverse consequences, to be sure, that could flow from a departure from the posted schedule of a previous Thursday. Thus, for example, if the Company failed to give due notice that an employee was to report for work on a turn other than his customary turn, it would have difficulty in establishing cause for discipline. If there had been "faulty scheduling" and an employee had been "notified to report to work" less than

two hours before his starting time and no work was available for him, the reporting pay provision would come into play. Furthermore, if the change in his starting time should result in working in excess of eight hours in a "workday" (Marginal Paragraph 100) defined as the 24 hour period beginning with the time he begins work (Marginal Paragrpah 96) he is entitled to overtime pay as provided. Finally, when the change in schedule takes the special form described in Marginal Paragraph 93 (a layoff on one of the five scheduled days resulting in work on what would have been the sixth or seventh workday under the posted schedule) he is paid at overtime rates for work on the sixth or seventh day.

These consequences of schedule changes are set forth to demonstrate that the parties were not unaware of the hardship imposed on employees by changes in the times when they shall work and that provisions were made to safeguard them against specific kinds of faulty scheduling and certain kinds of changes. There is nothing in the Agreement itself that supports the argument that the kind of change involved in this case was prohibited. There is no ambiguity in the word "workday" that would justify departure from the general rule that gives force and effect to what the parties have said. There is no language that requires a search for or a construction of an intention which the parties have not seen fit to express. Marginal Paragraph 91 says that schedules shall show "workdays" and accordingly, the schedules referred to in the provision immediately following (Marginal Paragrpah 92) are schedules of "workdays" and the prohibition against changing "such schedules", after posting on a Thursday, does not apply to a change in the turn or starting time on a given workday. Finally, the conditions set forth in the paragraph on which the Union relies for the penalty pay clearly indicate that the parties had days and not turns in mind.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: February 5, 1958