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

Grievance No. 20-F-17
Docket No. IH-219-214-9/30/57
Arbitration No. 243

Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations Department
G. A. Jones, Supervisor, Industrial Engineering Department
A. T. Anderson, Supervisor, Labor Relations
R. L. Smith, Superintendent, Wage and Salary Department
R. J. Stanton, Assistant Superintendent, Labor Relations
O. J. Crepeau, Assistant Superintendent, Mechanical Department

For the Union:

Cecil Clifton, International Staff Representative
J. Wolanin, Acting Chairman, Grievance Committee
F. Gardner, Chairman, W.R.I. Review
J. Negovetich, Grievance Committeeman

This is a contract interpretation dispute. No facts are in question. The issue is whether the grievant, J. Brooks, who as an employee of the Blacksmith Shop who has progressed through the so-called Work Practice and Self-Development Program had the right, under Section II-D-3 of the Mechanical and Maintenance Agreement of August 4, 1949, to insist at a time when there was no vacancy in the Blacksmith Craft that the Company give him the tests necessary to determine whether he had the qualifications for classification into that craft.

The Company declined to do so, and the grievance was filed as a result. Subsequently, some five months later, on October 28, 1957, when there was a vacancy in the Blacksmith Craft, grievant was given a series of tests and on December 18, 1957 it was determined by the Company that he was duly qualified, and he was classified and assigned accordingly. Nevertheless, the parties desire to have a ruling on the grievance as filed for their future guidance.

Section II-D-3 of the Mechanical and Maintenance Agreement is as follows:

> 3. An employee in any of the occupations covered by Section II-B-1 which is directly associated with a particular craft journeyman occupation for which no formal apprenticeship training program exists, and who has acquired through experience, practice and self-development the necessary qualifications and abilities, will be permitted to request and receive a determination

> of his qualifications for classification into that particular craft occupation; and, upon successfully fulfilling the requirements for such classification, shall be assigned to the "Starting Rate," subject to the provisions of Article VI, Section II of the Collective Bargaining Agreement. After classification and assignment to the "Starting Rate" of the particular craft journeyman occupation, such an employee may, after ten hundred forty (1040) hours of actual work experience with the Company at the "Starting Rate" request and receive a determination of his qualifications for assignment to the "Intermediate Rate." If so assigned, such an employee may, after an additional ten hundred forty (1040) hours of actual work experience with the Company at the "Intermediate Rate," request and receive a determination of his qualifications for assignment to the "Standard Rate." As used in this paragraph, the term "employee" shall mean the employees referred to in Section II-B-1, who have filed written notice with the Company of their desire to enter a particular craft journeyman occupation.

The reference to Article VI, Section 11 of the Collective Bargaining Agreement was correct in 1949 but this, it was agreed, would now be to Article VI, Section 8 of the Agreement, which provides:

> In the exercise of its rights to determine the size and duties of its crews, it shall be Company policy to schedule forces adequate for the performance of the work to be done. When a force has been scheduled and a scheduled employee is absent from a scheduled turn for any reason, the Company shall fill such a vacancy in the schedule in accordance with the provisions of Article VII, and if the schedule cannot be so filled, the Company shall call out a replacement or hold over another employee, unless the work to be accomplished by or assigned to the short crew can be modified so that it will be within the capacity of such short crew.

Article VII, referred to in the quoted provision, sets forth the seniority definitions, rights, and procedures to be followed in filling vacancies and promoting employees, among other things.

We note, then, that a non-apprentice employee who has acquired the necessary qualifications and abilities "will be permitted to request and receive a determination of his qualifications for classification into that particular craft occupation." Standing by itself this would clearly support the position of the grievant.

This provision, however, is only part of a long sentence. It is followed by a semicolon which precedes this statement: "and, upon successfully fulfilling the requirements for such classification, shall be assigned to the 'Starting Rate' ". The Starting Rate applies only to

employees who are assigned to the Craft. Consequently, the mandatory stipulation that one who meets the requirements of the classification shall be assigned to the Starting Rate can reasonably be held to apply only to a situation where there is a vacancy, for the provision declares that such assignment shall be upon successfully fulfilling the requirements, which clearly means that immediately after the employee demonstrates his qualifications he must be assigned to the Craft.

Again, however, this is not yet the end of the sentence. There is a comma, following which is attached this condition: "subject to Article VI, Section /8/of the Collective Bargaining Agreement." This section of the Agreement affirms Management's basic right to determine the size and duties of crews, qualified by the requirement that forces adequate for the performance of the work to be done shall be scheduled as a matter of Company policy. It is not contended in this case that as of the date of grievant's request to be subjected to the tests there was an available vacancy or that the Company had not scheduled adequate forces to perform the work of the Blacksmith Craft.

The question, then, is whether the last two clauses may reasonably be said to be restrictions or conditions on the right of the employee to request and receive the tests to determine his qualifications for classification into the Craft.

The Union urges that the provision giving the employee this right stands by itself, that Article VI, Section 8 merely protects the Company from being compelled to assign such an employee to the Craft when it has no vacancy in the Craft for the employee to fill. The Company insists that the discretion reposed in Management by Article VI, Section 8 applies as a condition precedent to all parts of the first sentence of Section II-B-3, that when it has no vacancy to fill it is under no obligation to conduct a series of tests to determine whether a given employee who happens to request it is qualified for entrance into the Craft, and this view is completely in accord with the practice of the Company consistently followed for at least the past seven years.

Each piece of the long and involved sentence in question is clear, but in toto the sentence is not devoid of ambiguity. This calls for an inquiry into the intent of the parties. Any employee, under the Union's view, could demand that he be given such tests, regardless of any likelihood that he will be assigned to the Craft. He may have no reasonable prospect of receiving such an assignment because there are no vacancies and none likely for a considerable period of time, or he may be an employee with relatively short length of service and even when vacancies occur older employees with equally good qualifications and longer experience will unquestionably be qualified and assigned to the job. This would, then, impose on the Company an expenditure of time and attention of no practical value to the Company. On the other hand, there may be a benefit to the employee in having more time to correct any deficiencies in his qualifications or abilities that may be revealed by such tests.

Assuming that these respective considerations were in the minds of the parties when they made this agreement, the fact remains that in

applying this contract provision for a considerable number of years the practice has been to invoke this section only when there is a position to fill. This reflects an understanding by the parties of the meaning of the provision which neither has questioned in any of the several negotiations conducted since 1950. This understanding surely cannot be said to be in conflict with the provision read as a whole, and certainly not in the light of the direct reference to Management's right to determine the forces to perform given duties and the indirect reference to the seniority rights and procedures which underlie this entire subject of promotion and the filling of vacancies. This leads to the conclusion that the Union's position cannot be sustained.

AWARD

This grievance is denied.

Dated: March 25, 1958

David L. Cole
Permanent Arbitrator