From our Inland files

INLAND STEEL COMPANY )
) Grievance No. 140.
- and - ) Docket No. 243A- IOMM4
) Arbitration No. 249
UNITED STEELWORKERS OF AMERICA )
Local Union No. 2099 )

Appearances:

For the Union:

Jack Powell, International Staff Representative
Harold Matthews, President, Local Union
Ronald Perala, Chairman, Grievance Committee, Morris Mine
Frank Harris, Member, Grievance Committee, Morris Mine
Robert Truckey, Member, Grievance Committee, Morris Mine

For the Company:

Henry J. Thullen, Attorney
Robert W. Edwards, Mine Superintendent
John W. Hendricks, Supervisor of Industrial Relations

The grievant, Gene Foster, works in the combination job of Lander-Dumpter. When he works as a Dumpter he is compensated at the rate of Job Class 11; as a Lander, at the lower rate of Job Class 7. His shift normally commences at 8 A.M.

Foster had qualified as a Hoistman. The employees in this occupation are required, by the Company to take annual physical examinations. On September 8, 1957 and October 7, 1957 Foster was told to fill in for a Hoistman (Job Class 12) on the following days (September 9, 1957 and October 8, 1957, respectively) for two hours on each day while a Hoistman was getting his semi-annual physical examination. The individual for whom he was to fill in was identified for him and he was told to look at the posted work schedule to determine his proper starting time. Foster did this and worked two hours as Hoistman on the two days mentioned, starting at 7 A.M. instead of his customary starting time of 8 A.M. At the end of this two hour period, on each day, he resumed the performance of his Lander-Dumpter duties. He left the mine after eight hours of work on each day.

Foster was compensated on each occasion for two hours of work at the Hoistman's rate and for the remaining portion of each day in the customary manner for Lander-Dumpter work. His grievance asks for compensation at the higher Hoistman's rate (Job Class 12) for eight hours on each day.

Article VIII, Section 6 of the 1956 Agreement reads, in relevant part, as follows:

> "Section 6. Transfers. Any employee * * * transferred during or at the beginning of a shift to a job having a lower rate of pay shall be paid for all hours worked on that shift at the rate of the job for which he was scheduled to report. * * * Any employee transferred at the beginning of or during a shift to a job having a higher rate of pay shall receive such rate of pay for the time worked at such job. This section shall not apply to regularly established combined jobs." (Underscoring supplied.)

The Union claims that as Foster was transferred during a shift on the days in question from a Hoistman's occupation to the lower rated occupation of Lander-Dumpter, under the first sentence of the cited section he should "be paid for all hours worked on that shift at the rate of the job for which he was scheduled to report", namely, Hoistman.

The Company objects that it was never intended to so construe or apply the language. It observes that this is a common and conventional provision in collective bargaining agreements the purpose of which is to protect employees "against an unexpected loss of earnings by being assigned to a job carrying a rate lower than the jobs for which he was scheduled to report." Here, says the Company, the purposes of the provision were not fulfilled because Foster had been notified before and on the previous day "of his schedule of work" and also, "he was not assigned to any job carrying a rate lower than the rate for his regular duties as Lander-Dumpter operator." In other words, the Company argues that Foster is not in the position of an employee who, being scheduled to report at a higher rated job (Hoistman) and expecting to work at it for the entire day, during the shift had been transferred to a lower rated job he did not expect to fill. Such a man, says the Company, suffers a disappointment in his expectations of a day's pay at the higher rate of the starting job. Foster, according to the Company, knew that he would only have two hours of work at the Hoistman's rate and that thereafter he would continue to work at his regular combination job. He suffered no loss of expectations and, indeed, had the advantage of the experience of Hoistman's work and its rate of pay for the time he performed it.

Speculations as to the purpose and intent of the provision under discussion is of little help here, especially in the absence of direct testimony and a record of the circumstances under which the language was negotiated. The Union claims that the purpose was other than that claimed by the Company. It is sufficient that the language contains no patent ambiguities which necessitate a study of the negotiating history and other

supplementary aids to understanding commonly used when language in an agreement is ambiguous. Whatever the intention in the minds of the Company and Union negotiators may have been, the document is clear in what it says.

Foster had been transferred, during a shift, from Hoistman to Lander-Dumpter. Therefore, he is to be paid "for all hours worked on that shift at the rate of the job for which he was scheduled to report." Although he was scheduled to work as a Lander-Dumpter after acting as a substitute for the Hoistman, he was not, as the Company claims, scheduled to report for Lander-Dumpter work. That work (Lander-Dumpter) was to be performed about two hours after the beginning of the shift. To give the language the interpretation contended for by the Company would deprive the words "scheduled to report" of their normal meaning. Having been scheduled to report for Hoistman's work and having subsequently been transferred during the shift to a lower paying occupation, Foster was entitled to eight hours of pay at the Hoistman's rate.

There are two other aspects of the Company's argument which require comment.

First, the Company makes reference to the fact that a parallel provision in a prior agreement (1952) provided

> "Any employee except contract miners transferred during a shift to an occupation having a lower rate of pay shall be paid for all hours worked on that shift at the rate at which he commenced work."

It was argued that the change to the language in the 1954 and 1956 Agreements was made in order to prevent any circumvention of the intention of the parties by a method of scheduling that would avoid payment by the Company of the higher rate for the day, namely, by scheduling an employee at the beginning of the shift at lower rated work and then transferring him later in the shift to higher rated work. The Company's brief says

> "It is beyond credulity that the parties intended to force the Company to use such a device and consistent with the over-all purpose of Section 6 of Article VIII * * * agreed upon the language 'scheduled to report' which would include all jobs for which an employee had been scheduled." (Underscoring supplied.)

But it is of the essence that Foster was not "scheduled to report" to all jobs for which he may have been scheduled or to which he might be assigned. He could only be and, in fact, was scheduled

to report for one job only: "the job" in which he commenced his shift. It is noteworthy that Article VIII, Section 6 refers to the rate of "the job" for which an employee was scheduled to report, not "jobs" as suggested by the Company. It is not for the Arbitrator, in this case to determine the rights and duties of the parties in the event Foster had reported for Lander-Dumpter work and was then transferred to Hoistman's work. Suffice to say the language is lucid and clear as to the situation under consideration.

Second, the Company claims that as an exception to the general rule that the standard hourly wage scale rate should be paid, Article VIII, Section 6 should be "strictly construed". It is doubtful that there can be any stricter construction than a literal construction such as is applied here to the words of the cited provision.

Both the Company and the Union relied upon local conditions or practices (Article VI Section 2) in support of their respective theories of the case. The evidence in the case was not sufficiently persuasive to outweigh the force and effect of the plain language of Article VIII, Section 6.

AWARD

The grievance is granted. The Company shall compensate the grievant at the rate of Labor Grade 12 for all hours he worked on September 9 and October 8, 1957.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: March 25, 1958