HOURS OF WORK
ART VI - SEC. 2

INLAND STEEL COMPANY	)	
	)	Grievance No. 12-F-46
- and -	)	Docket No. IH 237-230-11/4/57
	)	Arbitration No. 257
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Wage Rate & Incentive Review
Joseph Wolanin, Acting Chairman, Grievance Committee

This case involves a claim for overtime pay under Article VI, Section 2 C (1) (d) (Marginal Paragraph 103) which provides that overtime at the rate of one and one-half times the regular rate of pay shall be paid for

> "(d) Hours worked on the sixth or seventh workday of a 7-consecutive-day period during which the first five (5) days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as provided for in Subsection D of Section 1 -- Hours of Work; provided, however, that no overtime will be due under such circumstances unless the employee shall notify his foreman of a claim for overtime within a period of one week after such sixth or seventh day is worked; and provided further that on shift changes the 7-consecutive-day period of one hundred and sixty-eight (168) consecutive hours may become one hundred and fifty-two (152) consecutive hours depending upon the change in the shift. For the purposes of this Subsection C (1) (d) all working schedules now normally used in any department of any plant shall be deemed to have been approved by the grievance committeeman

of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days' prior written notice thereof to the Company."

The schedule of work of N. Petyo, the grievant, for the period involved was as follows:

	Week of June 23, 1957							Week of June 30, 1957						
	S	M	T	W	T	F	S	S	M	T	W	T	F	S
8 - 4	0	0	X	X	X	X	X	X	X	X	X	H	X	0
4 - 12						X								

On the July 4, 1957 holiday the grievant was scheduled off. It is agreed by the parties that work performed on the 4 - 12 turn on Friday, June 29, is not material to the issues in this case.

The grievance, filed on August 6, 1957 states:

"The aggrieved, N. Petyo, #4653, alleges that he is entitled to overtime rates for hours worked on Monday which was the seventh day worked of the seven consecutive day period from 6-25-57 to 7-1-57, during which the first five (5) days were worked. Such schedule was not mutually agreed to as provided in the Collective Bargaining Agreement, Article VI, Section 1." (Underscoring supplied.)

The relief sought is

"Request pay at overtime rates for days worked as specified above."

The grievance was denied by the Company in the first and second step on the mistaken assumption that the hours on Monday, July 1 were worked under an approved schedule. In the third step the Union appears to have convinced the Company that work on that day was not done pursuant to an approved schedule. The Company, accordingly, reversed its position on this grievance and granted it. This, however, did not result in any payment of any additional overtime pay to the grievant, the Company taking the position that since it had compensated him at overtime rates for Friday, July 5 as the sixth day worked in the workweek beginning June 30, 1957 (the holiday on Thursday, July 4, 1957 being counted as a day worked for this purpose) under Article VI, Section 2 C (1) (d) (Marginal Paragraph 103), on a net basis it had no further overtime pay liability to the grievant. Its reasoning was that the payment for Friday, July 5

would not have been made had it paid at overtime rates for Monday, July 1, as grieved, because the "Nonduplication" provisions (Article VI, Section 2 E; Marginal Paragraph 116) have the effect of eliminating from the days to be counted, for the purposes of Marginal Paragraph 102, hours that had been compensated for at overtime rates.

Thus, argues the Company, having already compensated the grievant for the sixth day in the second payroll week under mistaken assumptions of fact, it is under no further obligation to compensate him for the seventh consecutive day of work across two payroll weeks, although it belatedly admitted, at the third step, that a valid claim had been asserted therefor. The Company's argument amounts to this: that it has a claim against the grievant for overpayment on account of work on Friday, July 5, and that it is privileged to set off this claim against its conceded obligation to pay overtime compensation to the grievant on account of work performed on Monday, July 1. At the hearing the Union did not address itself to the merits of the Company claim against the grievant, and, accordingly, it is assumed, for the purposes of this opinion, that it is a valid one. Under these circumstances and inasmuch as the Company claim appears to be in an amount equal to that of the grievant's, no further adjustment in earnings seems to be indicated.

It is noted that the grievance states a claim "for hours worked on Monday [July 1] which was the seventh day worked of the seven consecutive day period". This claim was allowed by the Company in the third step of the grievance procedure, as indicated above. The Union, however, has taken the position that the grievant is also entitled to overtime compensation under Marginal Paragraph 103 for hours worked on Sunday, the sixth day in such period. While this claim is meritorious, the grievant is not entitled to the relief requested (and which otherwise would be granted on the facts of the case) because of a failure to comply with the conditions specifically set forth in that paragraph. Marginal Paragraph 103 states

> "no overtime will be due under such circumstances unless the employee shall notify his foreman of a claim for overtime within a period of one week after such * * * seventh day is worked."

The Company testimony is to the effect that the grievant had not so notified his foreman at any time and that the claim for sixth day overtime was not made on his behalf by his Union representatives until the third step meeting. Timely notification such as the parties have provided in their agreement is a condition precedent to the maturing of an employee's rights to overtime compensation, under Marginal Paragraph 103, and the Company's liability to pay such compensation. In the absence of evidence that the condition has been satisfied the Arbitrator has no alternative but to hold that the overtime compensation claimed for Sunday did not become "due".

AWARD

1. The grievant has a valid claim under Marginal Paragraph 103 of the Agreement to overtime compensation for hours worked on Monday, July 1.

2. The Company has a valid claim under Marginal Paragraphs 102 and 116 of the Agreement for overpayments of overtime compensation made to the grievant for hours worked on Friday, July 5.

3. These claims being in the same amount, may be off-set and, accordingly, the Company is not obligated to make any further earnings adjustment by reason thereof.

4. The grievance is denied to the extent that it requests overtime compensation for hours worked on Sunday, June 30, on the ground that the conditions precedent for such compensation becoming "due", as set forth in Marginal Paragraph 103 have not been met.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: May 6, 1958