SENIORITY
ART VII - SEC - 1 + 6

INLAND STEEL COMPANY	)	
	)	Grievance No. 12-F-37
- and -	)	Docket No. IH 242-135-11/19/57
	)	Arbitration No. 258
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
J. L. Federoff, Divisional Supervisor, Labor Relations

For the Union:

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

The grievance, filed July 1, 1957 reads as follows:

> "Eddie Hargo #4580, hired 3-28-56, now working as a (Piler Learner) Laborer claims that he is being denied consideration for promotional opportunity. He alleges that younger men in the department are being given the opportunity of time periods or breaking-in periods on higher paid jobs while this same opportunity is being denied to him in the mechanical sequence."

The relief requested in the grievance is that:

> "* * * he be immediately given a break-in period on the higher paid jobs and that any monies lost as a result of this violation of Article VII, Section 1 of the present Agreement be paid to him."

The grievant's job history is that he was hired as a Laborer in the Galvanizing Department in March, 1956. He was promoted to Hi-Lift Trucker in May, 1956 and on October 16, 1956 he bid successfully for a Hooker Shipping job. On October 21, 1956 he was made a Laborer on the Galvanizing Line pursuant to a request that he had made previously in August. From October 21, 1956 to

November 10, 1956 he worked as a Laborer on the Line and was trained as a Piler. From November 11, 1956 to June 2, 1957 he worked regularly as a Piler #3 Galvanizing Line. On June 2,1957 he became a "Learner", and continued to work as a Piler and to receive training on the Stocker and Tractor Operator occupations in the Line Sequence.

He challenges the right of two employees with later departmental service dates, Raysses and Crawford, to their jobs in the Mechanical Sequence. Stemming from the labor pool which is common to both sequences, the first three jobs in the Mechanical Sequence, in ascending order, are Maintenance Helper, Maintenance Handyman and Mechanical Repairman. Raysses and Crawford, coming from the Labor Pool had served on the Maintenance Helper job,one step above the pool, for at least six months prior to the date of the filing of the grievance before they were assigned to fill temporary vacancies in the other two higher jobs in the Mechanical Sequence. The record does not disclose on what days they filled temporary vacancies on those jobs more than one step above the Labor Pool, but it is understood that it is such assignments that the grievant contests when, in his grievance he alleges that "younger men in the department are being given the opportunity of time periods or break-in periods on higher paid jobs while this same opportunity is being denied to him in the mechanical sequence".

The Union invokes Article VII, Section 1 and Section 6. Its affirmative claim is that the grievant should have been assigned to the temporary vacancies in the higher paying jobs in the Mechanical Sequence in preference to Raysses and Crawford, his juniors in the department. At the hearing, the Union conceded that the Agreement confines the retroactive effect of the grievance, insofar as relief is concerned, to thirty days prior to the date thereof.

We are presented here with the problem of how the Agreement undertakes to balance the rights of three employees who at the time the grievance was filed were members of the Labor Pool and insofar as the record discloses, are still members of the Labor Pool, none of them having attained sequential standing or seniority either in the Mechanical or the Line Sequence. Two of these employees, junior in departmental service, were assigned to the Mechanical Sequence. It appears that they worked in the lowest job in that sequence fairly regularly, and filled in temporary vacancies in the two higher jobs from time to time as they occurred.

While the two juniors were working in the Mechanical Sequence the grievant, pursuant to his request in writing, had been assigned to the Galvanizing Line sequence, and worked fairly consistently until the date of his grievance (July 1, 1957) as a Piler. In that occupation he enjoyed pay at a higher level than his two juniors in the lowest job of the Mechanical Sequence, although, presumably, this would not be true on those occasions when the juniors were filling in on the higher paying jobs.

From November, 1956 until March, 1957, it is clear, the grievant voiced no complaint concerning these assignments. In March, according to the statement of his grievanceman, and, thereafter, in April, May and June he unsuccessfuly requested assignment to the Mechanical Sequence. (The grievant was not present at the hearing due to illness and his unavailability for examination and cross-examination made it difficult to establish whether this and other facts alleged in the case were accurately represented). Then, on March 2, 1957 he was made a "Learner" in the Line Sequence.

According to the Company, the Learner status, although not given explicit recognition in the Agreement or in a job description or classification, has been conferred on employees for some years without prior Union objection or grievance filed by an employee. It was stated that Labor Pool employees who are made Learners are given numbers according to which they are given preferential assignment in the sequence in which they are Learners ahead of other Labor Pool employees who are not Learners (even if they have longer departmental service) or who, if Learners, are junior to them on the Learner rolls. The alleged basis for this system is Article VII, Section 1 (b), the Learners, presumably, having had more experience in the higher paid jobs in the sequence in which they were working than others and, accordingly, more "ability to perform the work."

The Company argues that as a Learner, (from June 2, 1957 to July 1, 1957) with preferential rights in his Line Sequence job, the grievant, under Article VII, Section 6 was not "most conveniently available" to fill temporary vacancies in the "higher paid" jobs in the Mechanical Sequence. The Union says that the Learner system is contrary to the Agreement, does not affect the grievant's availability for assignment to the higher paid jobs in the other sequence, and that, in fact, under Marginal Paragraph 149, the employee may keep alive his applications for entrance into as many as four sequences at one time.

It is difficult to understand the Union's argument relating to multi-sequence applications because the cited paragraph refers only to permanent vacancies and here we seem not to be dealing with vacancies of that character. Similar difficulties are experienced with the Company's argument. Under Marginal Paragraph 146, it would appear that temporary vacancies, as defined, "shall be filled" by the employee on the turn and within the immediate supervisory group in which the vacancy occurs "in accordance with the provisions of this Article" (which, presumably, refers to the "ability" clause in Section 1). The record contains no information as to whether the vacancies, the filling of which the grievant complains about, were within his "immediate supervisory group" or whether they occurred on his turn. The provision under discussion here contains no allusion to "most conveniently available in accordance with their seniority" and, accordingly, even if the validity of the Company's argument with respect to the Learner system should be upheld, its relevance is

not perceived insofar as this provision is concerned. That is to say, the language is unambiguous: if a temporary vacancy occurred in the Mechanical Sequence it was required to be filled by the grievant if three conditions were met, e.g., 1) he was on the turn; 2) within the immediate supervisory group; and 3) the filling was in accordance with the criteria of Section 1. The phrase "most conveniently available in accordance with seniority standing", relied on by the Company does not appear until a later portion of Marginal Paragraph 146 and then, only with respect to vacancies "on the lowest job in the sequence"; and even here, the requirement is permissive ("may be filled") not mandatory ("shall be filled").

No textual basis can be found in the Agreement that the special protections and privileges accorded to the grievant as a Learner in the Mechanical Sequence disqualified him on "availability" grounds from assignment to temporary vacancies in the Mechanical Sequence to which he would have been entitled under Article VII, Section 6 if he had not been a Learner. It is not my purpose to express any views as to the legal status of the Learner system despite the fact that this was debated at some length at the hearing. A decision on that subject is not called for by the issue presented to me; but I do hold that whatever rights to fill temporary vacancies in the Mechanical Sequence the grievant had as a member of the Labor Pool, he did not relinquish them by accepting assignments as Piler on the Line prior to June 2, 1957 or by becoming a Learner on that date.

The Company argues, however, that it was justified in not assigning the grievant to the higher paying jobs in the Mechanical Sequence because, under Marginal Paragraphs 131 and 133, he did not have an ability to perform the work of the occupations involved relatively equal to that of Raysses and Crawford, his juniors in departmental service.

The Union contends that the question of "ability" is new matter not raised in the third step and, therefore, should not be considered in arbitration. There is some merit in the Union's objection. When one reads the third step answer one sees a full paragraph dealing with the timeliness of the grievance and another shorter paragraph in the course of which it is said, among other things, that the grievant "was not entitled to fill vacancies in the Mechanical Sequence under the provisions of Article VII, Section 6." One finds no emphasis upon or elaboration of the argument with respect to the absence of relative ability to do the job such as was made in the Company's brief and at the hearing. However, Article VII, Section 6 of the Agreement in the portions relevant to this case, does, indeed, refer to the filling of vacancies "in accordance with the provisions of this Article" and, in my judgment it would be over technical and unduly restrictive to deny the Company the privilege of basing its argument at the hearing on one of the ingredients of the basic provisions of the seniority article incorporated by reference in Section 6.

The Company says, then, that for the period November, 1956 to March, 1957, if the grievant had any rights, he did not exercise them. All during this period the junior employees were working in the Helper's job in the Mechanical Sequence (and filling temporary vacancies in the higher paid jobs in the sequence) which paid less than the grievant's Piler's job on the Line. The Company's argument takes the form of charging that the grievant was "having his cake and eating it --" that is, he was enjoying the fruits of his assignment to the Piler's job, and was unwilling to take or failed to ask for the lower paying bottom job in the Mechanical Sequence which the two juniors were using as a base to gain experience in the higher paying jobs in the sequence.

The absence of the grievant as a witness made it impossible to arrive at any well considered conclusion with respect to his motivations, brought into the case by the Company. The Company goes on to argue, however, that there was such disparity in the relative abilities of Raysses and Crawford on the one hand and the grievant, on the other, to perform the higher paid jobs in the Mechanical Sequence, that its choice of the two junior employees was well within its rights of assignment under the agreement.

This argument presents me with a question of fact on which each of the parties entertain strongly held opinions. There is a dearth of direct credible testimony in the record on this point. The Company refers to the six months or more that the junior employees spent in the lowest job in the Mechanical Sequence, and emphasizes the point that during this period they gained considerable experience on the higher paying jobs by filling temporary vacancies therein as they occurred. The record does not, however, contain any data which would indicate the dimensions and the breadth of the experience of these junior employees on such jobs which would demonstrate that their "ability" thereon was not relatively equal but, rather, superior to, the grievants. The Union, on this point, presented a heresay statement alleged to have been uttered by the Mechanical General Foreman (also not present as a witness) to the effect that "there is no question about Hargro's ability to work in this [mechanical] sequence, because he had worked up here the same as they came up working temporarily and they was carrying him as a helper when he would fill in temporary vacancies." Indeed, it seems probable that the grievant did serve some turns in the Mechanical Sequence, but the record does not disclose where or when.

On balance, after a careful review of the record, I cannot say that the Union has made a showing to prove that the judgment of the Company on the facts that are known, as to the relatively inferior experience and ability of the grievant, was incorrect. The Company, on the other hand has made at least a prima facie case that the grievant had less ability to do the higher paid Mechanical Sequence jobs than the junior employees by alleging, without contradiction, that they did have greater experience therein by filling temporary vacancies while the grievant was

serving as Piler. Accordingly, although the record is less than satisfactory on this point it compels a finding for the Company.

The Union charges that, in 1956, it was not for the grievant to seek out the temporary vacancies in the other sequences; the duty, it says, was the Company's to offer him such vacancies because of his senior departmental date. The mandatory language of Section 6 gives some support to this argument -- and if the Company had done this, presumably (or so the Union seems to argue) by March, 1957 when the grievant is alleged to have applied for assignment to the Mechanical Sequence, he would have had an ability to perform the work in that sequence which would not have been relatively unequal to that of the junior employees. The trouble with the grievant's case, however, is that if he was wronged, as he thinks he was, prior to March, 1957 (or June 1, 1957, 30 days prior to the filing of the grievance) he did not assert his rights. Without regard to what motivated him, the fact is that he was silently enjoying his rights in the Line Sequence while others, junior to him, without any objection by him, were increasing their experience and relative ability to perform the work in the Mechanical Sequence. The Arbitrator is inhibited by the retoractivity clause from turning back the clock. By sleeping on his rights until his juniors had garnered sufficient experience in the Mechanical Sequence to enable the Company to assert that their relative ability was superior to his, he forfeited his claim. The Arbitrator must take the situation as he finds it on July 1, 1957 (or thirty days prior thereto).

It is deserving of emphasis, at the risk of repetition, that in holding for the Company, I am not doing so on the status of the grievant as a Learner in the Line Sequence and his consequent unavailability for assignment to temporary vacancies occurring in another sequence. Neither do I decide the legal status of the Learner system which was attacked by the Union at the hearing. This case rests, rather, on the ground that the Company, based on the relative experience of competing employees for higher paying jobs in the Mechanical Sequence has shown a prima facie case that their ability to perform such jobs was not relatively equal to that of the grievant. The Union has not shown that this decision by the Company was wrong or lacking in rational and reasonable basis.

AWARD

This grievance is denied.

Approved:

Peter Seitz,
Assistant Permanent Arbitrator

David L. Cole,
Permanent Arbitrator
Dated: May 6, 1958