

INLAND STEEL COMPANY)	
)	Grievance No. 5-F-26
and)	Docket No. IH-258-251-2/3/58
)	Arbitration No. 263
UNITED STEELWORKERS OF AMERICA)	
Local Union No. 1010)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Joseph Wolanin, Acting Chairman, Grievance Committee
Anton Cherra, Grievance Committeeman

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
R. H. Werntz, Divisional Supervisor, Labor Relations
P. W. Nutting, Assistant Superintendent, #2 Open Hearth
J. E. Bolinger, Assistant Crane Foreman, #2 Open Hearth

When an incumbent of the occupation of Ladle Crane Operator in the #2 Open Hearth Department retired on August 1, 1957, the Company promoted J. Pop, then on the Hot Metal Crane, into the permanent vacancy. This promotion was objected to by F. Leyva, also on the Hot Metal Crane, and it is his grievance which has been appealed to the arbitration step.

The Promotion Sequence Diagram of the occupations involved appear in the following descending order:

1. Charging Car
2. Ladle Crane
3. Stripper Crane
4. Hot Metal Crane

The boxes on the chart representing the Charging Car and Ladle Crane are joined by a series of vertical lines which, according to the footnote "indicates advancement above the boxes so connected is dependent upon promotion through only one of them."

Pop has a sequential date more than six years earlier than that of Leyva, the grievant. Notwithstanding his junior sequential standing Leyva became established permanently as Hot Metal Craneman before Pop. Pop finally promoted into this job and achieved a sequential job level equal to that of Leyva, his junior in sequential length of service, on January 5, 1956.

In the #2 Open Hearth Crane sequence there is a well established practice of permitting employees to take "reserve" or training turns on higher rated jobs. As the record discloses, employees who avail themselves of the opportunity work with another experienced employee. In no sense do they fill a "vacancy", temporary or permanent, when taking reserve turns.

The employees on the Stripper Crane had waived promotion to openings in the Ladle Crane and Charging Car occupations. It appears that early in 1956, at some date not specified, Pop had passed up an opportunity to take reserve turns on the Ladle Crane. This is a central and important fact in the grievant's case. It signified as of that time he was content with his Hot Metal Crane job and had no desire to qualify himself for the higher rated job. However, he seems to have changed his mind. On September 10, 1956, Pop elected to accept reserve turns on the Ladle Crane. In the interim period, between Pop's refusal and then his later election to serve on reserve turns, Leyva had taken reserve turns on the Ladle Crane. As between these two employees, however, the first (non-reserve) assignment to a temporary vacancy on that crane occurred on February 7, 1957, and it was Pop, by then qualified for operation of the crane, who received the assignment, not Leyva. Leyva (contrary to the Company's assumption of fact in the earlier steps of the grievance proceedings) did not fill a temporary vacancy (other than a reserve turn) until February 24, 1957, two weeks after Pop's first assignment. There is no showing that Pop waived any temporary openings on the Ladle Crane to Leyva from the date of his first assignment to a non-reserve turn on February 7, 1957 to August 1, 1957, when he was assigned to the opening on the permanent job relinquished by one Schoknecht who retired.

A full statement of the circumstances discussed by the parties, or either of them is essential to an understanding of this case and requires reference to additional miscellaneous facts. Thus, the Union states that Leyva qualified for the Charging Car occupation on December 12, 1955 and "worked it regularly" while Pop was on the Loading Crane, not yet having established himself as a Hot Metal Craneman. The Union also states that the "Charging Car and Ladle Crane are the same rate of pay and bracketed so that employee can promote to either". (Underscoring supplied.) This interpretation of the effect of the series of vertical lines on the chart is confirmed by the Company's statement that "a Hot Metal Craneman may promote to either, rather than going through the Ladle Crane to get on the Charging Car."

Second, the Union claims that Pop "turned down" two permanent vacancies on the Ladle Crane which had been filled in April, 1956 and December, 1956 by Ramirez and Gibson, respectively, his juniors in the sequence. The Company's answer to

this is that Pop had not qualified (through having taken reserve turns) at either time for such jobs, and if he had applied therefor, he would have been refused. Furthermore, says the Company, if any significance disadvantageous to Pop is drawn from such permanent promotions around him, they are equally to be drawn with respect to Leyva who had sequential standing senior to Ramirez. Leyva, however, did not grieve on that promotion.

Third, Gibson had an earlier sequential date than Leyva. The Company points out that although Leyva had qualified himself for Charging Car assignments as early as December 12, 1955 and received temporary turns thereon, when Gibson filled temporary vacancies and later a permanent vacancy on the Ladle Crane, Leyva failed to use his Charging Car status as a basis for protest; nor did he claim that Gibson's failure to protest that he, Leyva, had gone ahead of him when he filled temporary vacancies on the Charging Car constituted a waiver by Gibson. However, says the Company, Leyva inconsistently claims that, in similar circumstances, the absence of challenge to his Charging Car assignments by Pop constituted a waiver by him.

Fourth, shortly after filling the permanent job on the Hot Metal Crane, according to the Union, Pop was filling vacancies on the Stripper Crane. It is impossible to make out from the record whether Pop was serving reserve turns or filling temporary vacancies as a qualified Stripper Crane operator. The Union Exhibit #1 says that Pop "moved to this job" but the meaning of this phrase and its significance here is not clarified by the Union's brief or elsewhere in the record.

The facts in this case are extremely complicated. The main questions, however, are simple. One question is whether, under the circumstances related, Pop waived his rights under Paragraph 151 (Article VII, Section 6 (b)) or "shall be considered as waiving". The other question is whether Leyva has standing to present this grievance and to ask for the relief requested therein.

If the second question is answered in the affirmative no occasion or need exists to consider all of the factual intricacies and complexities and the difficult problems of interpretation and application presented by the first question.

Leyva's grievance does not present a general question of interpretation; rather it presents the problem whether he has rights to the Ladle Craneman's job relatively superior to those possessed by Pop because Pop has waived. This necessitates a comparative analysis of the job history of both employees, because if Pop's title to the job is defective for some reason, the Arbitrator is not asked to disqualify Pop, alone, but to award the job to Leyva.

The record in the case indicates, however, that the theories argued and facts presented on behalf of Leyva to disqualify Pop, if sound, also disqualify his challenger, Leyva. If significance is to be given to the fact that Pop turned down reserve turns on the Ladle Crane, the answer is that he subsequently accepted them and filled temporary vacancies on such job ahead of Leyva. If it is argued that he permitted Gibson and Ramirez, both his juniors sequentially, to take reserve turns, fill temporary vacancies then permanent vacancies ahead of him, thereby waiving his rights, did not Leyva do likewise? As indicated above Leyva went around Gibson to qualify for and fill temporary vacancies on the Charging Car. He did not and does not claim that Gibson had waived when Gibson had failed to step up to fill Charging Car vacancies; but if Gibson had not waived, why say that Pop did? Again, Gibson subsequently went around Pop to fill temporary vacancies on the Ladle Crane and then a permanent vacancy. Pop did not protest, probably because he had not had sufficient reserve turns on the job to qualify him, at that time, for operation of the Ladle Crane. However, Leyva did not protest either, on the ground that Gibson had waived his rights when Gibson had permitted him, Leyva, to step up to temporary vacancies on the Charging Car.

This decision does not concern itself with whether waivers did or did not take place. The resolution of the issues here does not require any basic construction of Paragraph 151. It is sufficient to hold that under the circumstances described Leyva, whatever his rights may be, has no rights superior to those possessed by Pop which would entitle him to challenge Pop for the Ladle Crane job. The defects of title he attributes to Pop's claim to the job, if soundly based on the Agreement, exist as well in his own claim of right. Accordingly, it must be concluded that the grievant has no standing, in this case, to supplant Pop in the permanent vacancy in the Ladle Crane job.

AWARD

The grievance is denied.

Approved:

Peter Seitz,
Assistant Permanent Arbitrator

David L. Cole,
Permanent Arbitrator

Dated: June 30, 1958