INLAND STEEL COMPANY	)	
	)	Grievance No. 3-F-1
and	)	Docket No. IH-58-58-10/23/56
	)	Arbitration No. 265
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations
L. R. Mitchell, Divisional Supervisor, Labor Relations

For the Union:

Cecil Clifton, International Representative
Sylvester Logan, Acting Chairman, Grievance Committee

The grievance reads

> "Aggrieved worked August 12 /1956/ and was off the 13th; he then worked August 14 through August 23rd, inclusive, and was not paid time and one half for the 6th and 7th consecutive day worked."

Violation of Article VI, Section 2 of the 1956 Agreement is claimed and the grievant requests pay at the rate of time and one half for the sixth and seventh days worked.

The schedule worked, the hours for which premium rates were paid and those for which the claim is made are best explained by the following table:

	12 S	13 M	14 T	15 W	16 T	17 F	18 S	19 S	20 M	21 T	22 W	23 T	24 F
11-7			W										
7-3	W	Off	W	W	W	W	W	W	W	W	W	W	Off
3-11													

According to the Company, time and one half was paid (a) for eight hours doubled over on Tuesday, the 14th and (b) for hours worked on Saturday, the 18th. It is only the payment under (b) that is relevant to the issues here.

The Union claims that Sunday the 19th and Monday, the 20th were, respectively the sixth and seventh days worked in a seven-consecutive day period starting Tuesday the 14th (during which the first five days were worked) and therefore, under Marginal Paragraph 103 the grievant is entitled to overtime pay. The pertinent portion of that paragraph (Article VI, Section 2 C (1) (d)) which requires overtime at the rate of one and one-half the regular rate of pay is set forth for convenient reference:

> "(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, * * *"

The Company states that it paid the grievant at overtime rates for Saturday, the 18th because of its obligation to do so under Marginal Paragraph 102 (Article VI, Section 2 C (1) (c)) which provides that overtime rates shall be paid for

> "(c) Hours worked on the sixth or seventh workday in a payroll week during which work was performed on five (5) other workdays; it being understood that for the purpose of determining whether work was performed on five (5) other workdays, any day on which an employee reports as scheduled and is prevented through no fault of his own from working his regularly scheduled eight (8) hour turn shall be counted as a day on which work was performed." (Underscoring supplied.)

The Company then refers to Marginal Paragraph 116 headed "Nonduplication" (Article VI, Section 2 E (1)) which provides:

> "E. Nonduplication
> (1) Payment of overtime rates shall not be duplicated for the same hours worked, but the higher of the applicable rates shall be used. Hours compensated for at overtime rates shall not be counted further for any purpose in determining overtime liability under the same or any other provisions, provided, however, that a holiday, whether worked or not, shall be counted for purposes of computing overtime liability under the provisions of Subsection C (1) (c) above and hours worked on a holiday shall be counted for purposes of computing overtime liability under the provisions of Subsection C (1) (a) above."

The Company claims that, having compensated the grievant at overtime rates for hoursworked on Saturday, the 18th, because it was the sixth day in the payroll week (Marginal Paragraph 102) beginning Sunday, the 12th, the hours so compensated "shall not be counted further for any purpose in determining overtime liability under * * * any other provisions" such as those in Marginal Paragraph 103 dealing with the seven-consecutive day period extending into another payroll week.

The Union claims that this is contrary to the intentions of the parties as expressed in Paragraph 103 and has the effect of making it impossible for an employee to receive overtime pay on the seventh consecutive workday of a seven-consecutive-day work period because, having earned overtime pay for the sixth workday, the Company would not count that day in determining whether overtime was to be paid on the seventh day worked in that period.

The Company denies this to be the result of its interpretation and argues that but for the fact that it was obligated by the Agreement to pay overtime for Saturday the 18th which destroyed the future computability of that day for overtime purposes, overtime would have been paid for both Sunday and Monday as the sixth and seventh days worked across a work week. It points out that the special circumstance that Sunday (the 12th) was worked forced the application of Paragraph 102.

There is consistency in the Company's argument, but its premises are not necessarily true. It was presented with a series of obligations in Article VI, Section 2 C; and having made a voluntary choice of the least expensive of them, it now claims that the non-duplicating provisions constitute a bar to the application of alternative choices less advantageous to it.

The cited section contains overtime requirements for (a) hours worked in excess of forty in a payroll week (Paragraph 101); (b) hours worked on the sixth or seventh workday in a payroll week during which work was performed on five other workdays (Paragraph 102); and (c) 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 such days fall within the same payroll week (Paragraph 103). The Company chose to be bound by "(b)", an election which has the consequences of bringing the non-duplicating provisions into such play that, in a period of ten consecutive days of work there will be but one day worked at overtime rates. Having chosen to pay for Saturday the 18th, at overtime rates by applying Paragraph 102, it is on firm grounds when it says it cannot further count that day for overtime purposes; and inasmuch as Saturday must be counted as one of the first five days worked in the 7-consecutive day period if Paragraph 103 is to be applied, there is no possibility of such application.

The fallacy here is that there is no greater obligation upon the Company to pay overtime rates under Paragraph 102 than there is under Paragraph 103. The Company chose to be bound by that alternative which afforded it an argument based upon the non-duplicating provisions and restricted its overtime obligations. However, it might just as well have chosen to be bound by Paragraph 103 which, independently, imposes an overtime obligation of equal dignity and force. The concern of the employee, as to the rate and amount of overtime paid, is at least equal to that of the employer because overtime is compensation for having been scheduled for work during hours outside of the normal or accustomed cycle of work performance. Accordingly, the grievants have at least as much interest as the Company that the overtime provision chosen from the array presented by Article VI, Section 2 C be advantageous to him.

Although the Agreement contains no explicit direction as to which of several overlapping and concurrently operative overtime provisions potentially applicable are to be used, it does provide some guides in Article VI, Section 2 E (Nonduplication). There it is said that

> "(1) Payment of overtime rates shall not be duplicated for the same hours worked, but the higher of the applicable rates should be used. * * *"

Thus, where the contract presents a choice of multiple overtime rates for the same hours worked, the parties have legislated that rate which yields the greatest earnings to the employee is to be chosen as the basis for compensation. In the absence of any more explicit command in the instant situation - where it is not a multiplicity of rates but, rather, overlapping situations under which overtime must be paid - the provision cited from subsection E of Section 2 furnishes a reliable guide to the application of the provisions of subsection C of that same Section. I have been directed to no more compelling considerations or contract provisions than the first sentence of Paragraph 116 that would justify the Company to choose the overtime provisions most favorable to its interest, i.e., that which would require the least overtime compensation for the hours worked.

Accordingly, I reach the conclusion that the grievant here is entitled to the application of Paragraph 103. This requires that he be paid at overtime rates for the sixth and seventh workdays of a 7-consecutive day period. In this case those days would be Sunday (the 19th) and Monday (the 20th). The Company has already paid for 8 hours at time and one-half for Saturday (the 18th). That overtime payment will be allocated to Sunday (the 19th) instead of Saturday (the 18th) in conformity with the non-duplicating provisions of Paragraph 116. The Company

will then satisfy its obligations by compensating the grievant at overtime rates for Monday (the 20th) the seventh day worked in the 7-consecutive day period extending over two payroll weeks.

I am not persuaded, at this writing, that overtime pay required under Federal law (such as the Fair Labor Standards Act or the Walsh Healey Act) disqualifies hours worked and so compensated from being counted for overtime purposes in determining overtime liability under this Agreement. This aspect of the case, although very briefly mentioned at the hearing was not elaborated upon or developed then and was not mentioned at all in the Company's formal and otherwise full pre-hearing statement.

AWARD

The grievance is granted on the terms set forth in the opinion.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: June 30, 1958