INLAND STEEL COMPANY	)	
	)	Grievance No. 7-F-26
and	)	Docket No. IH 265-258-2/3/58
	)	Arbitration No. 271
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
Charles Krivickas, Grievance Committeeman

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
M. J. Riffle, Divisional Supervisor, Labor Relations
C. Bogdan, Turn Foreman, Plant #2 Scarfing Dock

In this case, L. Tillotson a Billet Hooker in the first step of a two-job sequence complains that his departmental service was not honored when assignments were made to fill vacation and other temporary vacancies in the single-job sequence of Billet Dock Assistant Shipper. Since filing his grievance Tillotson has been promoted to fill a permanent vacancy in the last named occupation. The relief requested is pay lost by reason of failure to promote the grievant to such temporary openings.

On the Promotional Sequence Diagram, both jobs, Billet Hooker and Billet Dock Assistant Shipper stem from the Labor Pool in the #2 Blooming Mill Department. During the week of September 8 to September 14, 1957, referred to in the grievance, the Assistant Shipper on the 4-12 turn promoted to fill a vacation vacancy, thus creating a temporary vacancy in his job. The Company asserts, and the Union does not deny, that there was no employee in the Labor Pool who was qualified to perform the Assistant Shipper's duties. (Article VII, Section 6 (a)). The Company stresses this circumstance as the factual background justifying the assignment grieved herein. It states that the procedure outlined in the cited provision

> "was found unavailing due to the lack of employees in the category entitled to fill such a vacancy." (Underscoring supplied.)

Accordingly, the Company assigned to the vacancy J. Cosentino who shared the Billet Hooker job with the grievant, but who was on the 8-4 turn. The grievant was on the 4-12 turn, the same turn as that on which the temporary vacancy of Assistant Shipper occurred.

The grievant, Tillotson, had a departmental date senior to Cosentino's; Cosentino, however, had a sequence date in the Billet Dock Scarfing Sequence senior to the grievant's.

The Company asserts (and this was not controverted) that Billet Hookers "work with and are directed by the Assistant Shipper". Because of this fact and the opportunities gained by Billet Hookers to acquaint themselves with the duties of Assistant Shipper, the Company for years has used the Billet Hooker's job as the resevoir for filling temporary vacancies in the Assistant Shipper occupation.

The Union claims that Article VII, read as a whole, in the circumstances presented, required that the Company give paramount recognition to the superior departmental status of the grievant in the lateral movement to fill the temporary vacancy in the other single-job sequence. The Company claims that there is no provision that commands this and, in the absence of any specific limitation, its authority to direct the working forces and to promote permitted it to assign Cosentino (who worked on another turn) to the temporary vacancy rather than the grievant. No issue is presented as to the ability or physical fitness of either to perform the work.

The practice of assignments to temporary vacancies in the Assistant Shipper occupation, in exhibit form, was presented for the record. This shows for the period prior to the week in question, when the vacancy in Assistant Shipper was on the 8-4 turn (Cosentino's turn), Cosentino was regularly assigned to it if he were available. Tillotson seems not to have protested this. When the vacancy was on a 4-12 turn (Tillotson's turn) we find a miscellany of situations. In the periods June 24-28 and July 1-5, the grievant was assigned to the vacancy, but it is noted that Cosentino was on vacation at the time. On July 30, 31, the grievant was assigned even though Cosentino was working the 8-4 turn. On August 12-17 the grievant got assignments to Assistant Shipper on his 4-12 turn; but Cosentino also got assignments on his 8-4 turn, the Assistant Shipper on each turn having promoted to fill vacation vacancies of foremen on each turn. During most of the period August 12-31, Quigley, the Billet Hooker with the senior sequential date and senior to all but the grievant in his departmental date received the temporary assignment on the 12-8 turn which was his turn as Billet Hooker. Then on September 9, 10, 11, 12, 13 (the period referred to in the grievance) and again in the periods September 22-31 and October 1-11 when the Assistant Shipper on the grievant's 4-12 turn was absent, Cosentino filled the vacancy.

No firm conclusions can be drawn or definite pattern of assignment discerned from the data presented. However, it does appear that there was a tendency for the Company either to have regarded Cosentino as having superior rights to the vacancies or for the Company to have preferred to assign Cosentino to the vacancies. Apparently this was grounded on the Company's view that it was free to do so, in the absence of any contract provision to the contrary. The lack of complete uniformity in practice is explained on the ground that there may have been situations when Cosentino did not wish to fill the vacancy, or could not - and in these situations the grievant was selected. The Company witness indicated that when the vacancy was foreseeable, as in the case of vacation (or the promotion of Assistant Shipper to fill a foreman's vacancy), it was the practice to assign Cosentino.

Marginal Paragraph 146 (Article VII, Section 6 (a)) is the provision of the Agreement which deals specifically with promotions to fill temporary vacancies. It provides as follows:

> "(a) Promotions. Temporary vacancies of twenty-one (21) consecutive days or less and those where no definite information as to the duration of the vacancy has been furnished to the department management by the time schedules for the next work week are posted, shall be filled by the employee on the turn and within the immediate supervisory group in which such vacancy occurs in accordance with the provisions of this Article, except that, where such vacancy is on the lowest job in the sequence, it may be filled by the employee in the labor pool group (including available employees in single job sequences) most conveniently available in accordance with their seniority standing, and except that such vacancies due to vacations may be filled in accordance with sequential standing where the superintendent of the department and the grievance committeeman so agreed under the 1954 Collective Bargaining Agreement between the parties. Temporary vacancies which are known to extend twenty-two (22) consecutive days or more shall be filled by the employee within the sequence who is entitled to the vacancy under the provisions of this Article."

Thus, temporary vacancies (such as occurred here) "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". This language, by itself, does not indicate whether it is required that the "employee on the turn" be one who is in the sequence where the vacancy occurs or may be in another sequence. The only light on this question is shed by the heading of Section 6:

> "Filling of Vacancies and Stepbacks Within A Sequence." (Underscoring supplied.)

Accordingly, it would seem that the Company and the Union were saying in the Agreement that when a temporary vacancy occurred, it was to be filled by an employee on the turn in the sequence and within the immediate supervisory group. Here, as we know, there was no such employee in the single job sequence of Assistant Shipper. The provision then goes on to state

> "* * * in accordance with the provisions of this Article * * *"

This is taken to signify that, to the extent that they are applicable, all of the provisions of Article VII - Seniority shall be available to resolve disputes and doubts as to procedure to be utilized as between employees on the turn, in the sequence, and in the immediate supervisory group.

The Union contends that if the other tests of promotion to a vacancy cannot be applied, the words "in accordance with the provisions of this Article" have independent force and effect. It claims, for example, that such language brings into operation, in such a situation, Article VII, Section 1, which requires that where ability and physical fitness are relatively equal, length of continuous service shall govern. It argues that "wherever there is no specific provision for the use of sequential standing as the basis and criterion for determining who is to be chosen, * * * compliance with the provisions of this Article means that the departmental service is the effective test". It urges that "wherever sequential seniority is not involved" the proper standard to be applied is departmental seniority and, accordingly, that the grievant, as the oldest man in the department, was entitled to the assignments on grievant's turn in the other sequence.

That such a "departmental service" rule might be salutary is evidenced by the lack of consistency in assignments by the foreman when he filled Assistant Shipper vacancies in the past. In the absence of a well understood rule, based upon ability or length of service, the assignments could take on the appearance

of being arbitrary, capricious or even discriminatory (although this last characteristic is not claimed here). The Arbitrator, however, is bound by what the parties have said, not by what might appear to be desirable to him or to others. The direction as to how vacancies are to be filled is headed with the phrase "within a sequence". The Union concedes that Article VII, Section 6 (a) is applicable but where it cannot be executed according to its terms seeks to go afield to apply the departmental seniority rule expressed as a general, not a specific guide in Article VII, Section 1. Thus, according to the Union's view whenever the question of promotion or stepback should arise, the specific tests prescribed in the applicable section of Article VII are to be applied; but if it should appear two or more applicants who have met the tests of the formula are competing for the job, the language

> "in accordance with the provisions of this Article"

appearing in several places in Article VII means, among other things (and in the context of this case) that where ability and physical fitness are relatively equal, length of continuous service should govern.

In this situation, the formula was not met. There were no employees in the sequence (Assistant Shipper's) on the turn. The other provisions of Article VII cannot be read as applicable to the situation because "in accordance with the provisions of this Article" is not an independent criterion, standing alone, to be used when the specific standard of the first sentence of Paragraph 146 cannot be applied.

This analysis of the language compels the conclusion that the Company was not inhibited by any provision of the Agreement from assigning the junior man, departmentally, on another turn, to fill a temporary vacancy in the other sequence.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: June 30, 1958