7/30/58 Kuhnick

INLAND STEEL COMPANY	)	
	)	Grievance No. 19-F-41
and	)	Docket No. IH 323-314-5/12/58
	)	Arbitration No. 272
UNITED STEELWORKERS OF AMERICA Local Union No. 1010	)	Opinion and Award

XI-143 XI-143 XIV-5

Appearances:

For the Company:

Henry Thullen, Attorney
Robert Anderson, Attorney
Jack Stanton, Assistant Superintendent, Labor Relations
LeRoy Mitchell, Divisional Supervisor, Labor Relations
James Stoddart, Assistant Superintendent, Field Force

For the Union:

Cecil Clifton, International Representative
Peter Calacci, President, Local Union
James O'Connor, Grievance Committee

On January 2 and January 3, 1958 a number of Field Force Carpenters scheduled for work in the No. 4 Slabbing Mill Area were denied the use of open fire salamanders by their foremen and decided to choose the alternative of going off the job rather than to work under the cold conditions then obtaining. Their grievance requests that they be reimbursed for lost time and that the Company be required to "re-institute the policy of providing salamanders upon reasonable request".

A procedural question is presented at the threshold of the case. The Union inaugurated its grievance in the third step of the grievance procedure. The Company, by letter to the International Representative of the Union took the position that the grievance had been "improperly filed in the third step", returned the grievance notice and stated that it would be accepted in the first step of the procedure. The Union persisted in its position, however, that it was privileged to begin at the third step. There was no third step answer, in the light of this procedural difference and the case is before the Permanent Arbitrator on appeal from the refusal of the Company to accept the grievance. The Company takes the position that the appeal should be dismissed on the procedural ground; but if the procedural objection should be overruled, then it should be dismissed on the merits.

The grievance notice claims violation of Article XI, Section 1-3 and Article XIV, Section 5 (Local Conditions and Practices). Article XI is entitled "Safety and Health". Section 1 provides that the Company shall make reasonable provision for safety and health of its employees; Section 2, that protection equipment shall be provided under described circumstances; and Section 3 that "it shall be the policy of the Company to give consideration to providing heat and ventilation in connection with abnormal working conditions where needed in the judgment of the Company".

None of the above provisions contain any provisions as to the step in the grievance procedure a grievance arising thereunder may be heard, initially. At the hearing the Union invoked Section 6 of Article XI which reads as follows:

> "Section 6. Disputes. An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to: (1) file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from the job or jobs; and, at Company's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job." [Marginal Paragraph 243]

> "The arbitrator shall have authority to establish rules of procedure for the special handling of grievance arising under this Section 6." [Marginal Paragraph 244]

As set forth in its statement presented at the hearing, the Union's position is that

> "a grievance involving safety, whether it was Sections 1, 2, 3 or any other provision of that Article [Article XI] properly fell within Section 6. We pointed out that Section 6, while not quoted in the grievance as being vio-

> lated, nevertheless gave us the right to file the grievance in Step 3, since we contended that those employees were being required to work under conditions that were unsafe and unhealthful above the hazards that would be normally inherent on the occupation." (p.3)

The meaning and effect of Section 6 of Article XI was the subject of discussion in the opinions accompanying the Awards in Arbitrations Numbers 208 and 210. In these cases it was said that an employee who believes that he is being required to work under "conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation" may pursue one of two courses: he may get relief (be relieved of the necessity of performing as assigned) and, at the Company's discretion be assigned to such other employment as may be available; or if he continues to perform the job notwithstanding his belief of the presence of such hazards, he may

> "file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration."

Presumably, if he elects to seek relief and no other work is available, he will not be compensated for the period during which he refused to work because of the presence of the hazardous condition described in the provision. On the other hand, if he elects to work, despite his belief as to the existence of the hazards, it was wisely provided that his case would get preferred handling in the grievance procedure (starting with the third step) and in arbitration. To give assurance that such "special handling of grievances arising under this provision will, in fact, be afforded to one who elects to work notwithstanding the believed hazards the parties took the unusual course of conferring authority upon the arbitrator to establish rules of procedure.

A careful reading of the organization of Article XI, particularly the provisions of Section 6 and the last paragraph thereof with its reference to "special handling of grievances arising under this Section 6" (underscoring supplied) compels this conclusion: that the unusual and special procedure of expeditious processing of grievances relating to the requirement of working under the conditions described in Margainal Paragraph 243 refers only to grievances properly falling within the provisions of that paragraph. The Permanent Arbitrator is bound and limited by the understanding and the will of the parties. In the document that embodies and expresses that understanding and will there is no reasonable basis for claiming that mere failure of the Company to comply with Sections 1, 2 or 3 of Article XI, by itself, entitles a grievant to initial

processing in the third step. In order to do so he must believe that the conditions described in Section 6 (Marginal Paragraph 243) exist and, as an alternative to "relief" and assignment to other work, if available, he must assume the alleged hazards and work as assigned. It is only because he has a belief, in good faith, that he is being "required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation" that the parties have afforded an employee a rapid means of adjusting and resolving the dispute. If he elects not to work in compliance with the assignment he does not have recourse to or the benefits of the accellerated procedure.

Lest there be misunderstanding of what is said here, it seems important to observe that it is not being held that a failure of the Company to fulfill its duties under Sections 1, 2 or 3 automatically removes a case from the "special handling" provided by Section 6. The hazards described in Section 6 may well exist because there has been a failure to comply with Sections 1, 2 and 3; however, the "special handling" is not available to the grievant unless the provisions of Section 6, themselves, are satisfied.

In this case, the grievants were told that they should work without open-fire salamanders or should go home. They did not invoke Section 6 of Article XI on the days this choice was presented to them, nor did they do so on January 31, 1958, almost a month later, when the grievance was filed. It was not until a later date, unidentified in the record that the Union rested its procedural position on Article XI, Section 6. Insofar as the record reveals they did not ask for "relief", as referred to in that Section and there is no evidence that other work was available to which the Company, in its "discretion" might have assigned them.

Under these circumstances it is found that the conditions do not exist for the initial processing of the grievance in Step 3 as provided in the Agreement. The merits of the case have been presented to the Permanent Arbitrator in testimony and argument, but it is an integral and essential element of the understanding of the parties as expressed in their Agreement that the grievance procedure be exhausted before a dispute be resolved by an arbitration award. This grievance has never been properly explored and considered by the parties in the course of the grievance procedures which they have established. Accordingly, the Permanent Arbitrator would be acting beyond the authority which the parties meant to confer upon him by accepting the case for a decision on the merits without the benefit of discussion by the parties in the earlier steps.

The considerations alluded to, above, call for a decision upholding the Company's assertion that the grievance was improperly processed in the third, as the initial, step of the grievance procedure, but denying the Company's motion, at this stage, that the appeal should be dismissed on its merits because the grievance provisions of the Agreement have not been fulfilled. Those considerations indicate that the grievance should be remanded to the parties for processing in accordance with the provisions of the Agreement.

AWARD

1. The Company's position that the grievance was improperly filed in the Third, as the initial, step is upheld.

2. The Company's motion to deny the grievance is rejected.

3. The grievance is remanded to the parties for processing, starting with the First Step in accordance with the Agreement.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: July 30, 1958

INLAND STEEL COMPANY	)	
	)	Supplement to
and	)	Arbitration No. 272
	)	
UNITED STEELWORKERS OF AMERICA Local 1010	)	Grievance No. 19-F-41

On July 30, 1958 Award 272 was issued. It ruled that:

"1. The Company's position that the grievance was improperly filed in the Third, as the initial, step is upheld.

"2. The Company's motion to deny the grievance is rejected.

"3. The grievance is remanded to the parties for processing, starting with the First Step in accordance with the Agreement."

The Arbitrator did not dismiss the grievance, but remanded it for consideration by the parties in all three steps of the grievance procedure. He explained his reasons for doing so, the principal reason being that the Union was in error in assuming that Article XI, Section 6, as interpreted in Awards 208 and 210, gave it the right to initiate all unsafe or unhealthy conditions disputes in Step 3. This may be done only when the employee or employees continue to work under the conditions which they believe to be abnormally unsafe or unhealthy, and not when they elect to be relieved from the job.

The grievance had nevertheless been filed in good time, and it was remanded by the award for processing in all three steps. No new grievance was necessary, and the fact that the remand was handled through the filing of a duplicate grievance does not change this fact. The Arbitrator's authority to control his procedures is well established; in this case he is specifically given the authority in Paragraph 244 to control the handling of grievances arising under Article XI, Section 6.

Under these circumstances, it would be improper to sustain the Company in its position that the duplicate grievance, designated by it as Grievance No. 19-F-41-A, should be dismissed because it was filed too late.

It becomes necessary to rule on the merits. For this purpose I find myself in need of specific evidence as to the facts and circumstances under which the grievants left their work. I desire to know whether and how they were told to go home in each instance, referring to the three men who first left on January 2; the 14 others who followed them; the 13 who left at 1:00 p.m.; the 19 who left the next morning at 9:30 a.m.; and the 17 who left at 11:45 on January 3. I desire to have the Company and the Union present evidence on this point. I suggest that this be done, on a day agreed upon by the parties, during the hearing days scheduled for February, 1961.

Dated: January 10, 1961

/s/ David L. Cole

David L. Cole
Permanent Arbitrator

INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local 1010)

Second Supplement to
Arbitration No. 272
Grievance No. 19-F-41

This award is supplementary to the original award of July 30, 1958, and to the supplement of January 10, 1961. The earlier awards dealt with procedural aspects of this dispute, and the instant award relates to the merits.

The issue is whether employees who left the job on January 2 and January 3, 1958 because they considered it unsafe and unhealthy to work without fires in salamanders should be compensated for the time they lost. It has already been ruled that this grievance was not raised or processed as a violation of Article XI, Section 6. It then becomes essentially a question of whether any of the employees were improperly disciplined by being sent home, it being asserted the Company was in violation of Article XI, Sections 1, 2, and 3 in the course it followed.

The transcript does not reveal any single, clear theory. It covers the subjects of unduly hazardous or unhealthy conditions of work, local conditions or past practices, and the difference in behavior of employees within the same group. The Company acknowledges that its policy with reference to the use of salamander fires to warm employees working outside had undergone a change because of personal injuries that had been sustained through their use.

In a case of this kind one invariably finds some strong contradictions in testimony. My reading of the transcript leads to the finding that there were two types of orders given to the employees who were involved. The difference was not great but was significant.

The first three men who left their work, Messrs. Newell, Painter, and Allen, did so because their foreman told them they were marked off and should go home. This is supported or corroborated by statements and testimony at pages 27, 36, 41, 46, 68, 73 and 74 of the transcript. The foremen's description of what happened as to these three is not seriously in contradiction of the employees' testimony on this score.

The other employees who left later that day and on the next day did so when they were given the choice of working without salamander fires or going home. The Union called this a "Hobson's Choice" but it was a choice nevertheless. The employees could have filed a grievance squarely under Article XI, Section 6 and used one of the alternatives there provided, but elected not to do so. In fact, this grievance was not filed until many days after the events as to which this complaint was made.

Considering the confused state of the circumstances relating to the use of salamanders, I believe the disciplining of the three named grievants by sending them home was not for good cause. On the other hand, when the others left either later that day and when the several grievants left the following day, this was in accordance with their own decision that they would rather not work under the prevailing conditions. Even if Article XI, Section 6

had been invoked and they had left their jobs because of the cold, the Company having no other assignments for them, they would not have been entitled to pay for the hours lost. See Arbitration No. 208.

In Arbitration No. 176 under somewhat similar circumstances a grievance was sustained when several employees were sent home for refusing to work without the comfort of salamander fires and were further disciplined by being suspended for several days. If the Company had taken similar disciplinary action here, this ruling would have been the same. But when the only action taken by the Company was to permit the employees to decide to refrain from working the rest of the day, this is difficult to criticize under all the circumstances.

AWARD

The grievance of Messrs. Newell, Painter and Allen with respect to the hours of work they lost on January 2, 1958 is granted; the grievances of all the others are denied.

Dated: October 3, 1961

/s/ David L. Cole
David L. Cole
Permanent Arbitrator