INLAND STEEL COMPANY	)	
	)	Grievance No. 19-F-39
and	)	Docket No. IH 284-277-3/10/58
	)	Arbitration No. 276
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Company:

Henry Thullen, Attorney
Robert E. Anderson, Attorney
R. J. Stanton, Assistant Superintendent, Labor Relations
LeRoy Mitchell, Divisional Supervisor, Labor Relations
James Stoddart, Assistant Superintendent, Field Forces

For the Union:

Cecil Clifton, International Representative
Peter Calacci, President, Local Union
Fred A. Gardner, Chairman, Grievance Committee
James O'Connor, Grievance Committeeman

On Thursday, November 14, 1957, 93 Field Force Carpenters reported for work and were assigned to build and set forms and reinforcement rods for the foundation at No. 4 Slabbing Mill. They were all transported to the job site by about 8:15 A.M. at which time there was a heavy downfall of rain. They took shelter in trailers adjacent to the job site until about 9 A.M. when the rain either stopped or decreased measurably in volume. They issued forth from their shelters and when the rain resumed about 15 minutes later, they again repaired to shelter. At about 10 A.M. when the rain again diminished in some degree, but had not stopped, their foreman canvassed them and instructed those who would not work to go home. About 47 employees elected to leave the plant. At about 11 A.M. five additional employees, who had been working in the rain up to this time, informed their foreman that they did not intend to continue to do so, whereupon they also were told to go home. At 1 P.M. two other employees elected not to work in the rain and went home.

The remainder (some 39 employees) worked in the rain all day excepting, perhaps, during the periods of heavy downfall, when, with either the express or implicit permission of the Company, they took shelter in the trailers which, according to the Company were furnished for this and other purposes. Some of these employees wore rain gear (consisting of raincoats and pants) which was available for the entire crew of 93 Field Force employees.

The employees who went home were scheduled for work on Saturday, November 16 in addition to Thursday, November 14, and were compensated at the rate of time and one half only for those hours of work in the week in excess of 40. Their grievance asks for compensation for all hours worked on Saturday, November 16, on the theory that it was the sixth workday in the payroll week and that their failure to work a full day on Thursday, November 14, one of the five "other workdays" on which work was performed was "through no fault" of their own. The provision of the Agreement on which they rely (Article VI, Section 2, B, 1, (c); Marginal Paragraph 102) requires that overtime at the rate of one and one half times the regular rate of pay 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 workinghis regularly scheduled eight (8) hour turn shall be counted as a day on which work was performed."

On behalf of the grievants the Union also invokes Article XIV, Section 5 (Marginal Paragraph 262) which reads as follows:

> "Section 5. Local Conditions and Practices. This Agreement shall not be deemed to deprive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect at the time it is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

The local condition or practice which the Union claims to have existed was that work has not been required of Field Force employees such as the Carpenters in the outdoors when it is raining, excepting in emergencies such as when a concrete pour is scheduled or has been started.

Attention will be directed first to the claim based upon "local condition or practice". One of the grievants testified that in his five years as a Field Force Carpenter he had not been required to work in the rain; and that, previously, the Company had either found indoor work for him to perform (when he had been scheduled for outdoor work) or he had been permitted to wait out the rain in a shanty or trailer. He had no recollection of spending the entire day under shelter, not working, on occasions when it rained all day. The Grievanceman, a Field Force Rigger since 1950, knew of no instance when Carpenters or other Field Force employees were required to work in the rain except for "emergencies". The testimony of the General Foreman of the Carpenters was not in conflict with this account, but tended to support it. He testified that the Company never expected Carpenters to work in a heavy fall of rain; that in the past it had always been successful, so far as he could recall, in so planning and scheduling their work that on rainy days they either worked under cover or were permitted to wait out temporary downfalls of rain; that November 14, 1957 was the first time in his recollection, on a rainy day, that as many as 93 employees were scheduled to work on a particular project; and that it was neither practicable nor feasible to redirect or reassign as large a group as this to other unscheduled work under cover and that, in fact, no such work was available except perhaps for one gang of from 15 to 20 men.

The Company refers to the fact that the force of Carpenters had been augmented within the last year or so from about 95 to 100 to about 135 and that previous to November, 1957, it had had no occasion to cope with the problem of reassigning as large a group as 93 employees to work where they would not be exposed to rainfall. It denies that there existed any local condition or practice not to require carpenters to work in the rain and that if they did not do so it was because the Company preferred they should not do so, if possible, and because it was successful in its efforts to have them work under cover.

The naked fact that Carpenters had not been required to make a choice in the past between working when it rained or going home does not, in the light of the entire record, prove the existence of a local custom or practice of not working in the open on rainy days. There are too many considerations here which stand as an obstacle to that conclusion. For example, it is significant that what the grievants regarded as a local custom and practice benefiting them was not similarly regarded by 41 per cent of the crew of Carpenters who worked throughout the

day on November 14. Moreover, five of those who went home, two hours after the departure of the initial and the largest group, also worked for some time in the rain before invoking or standing upon the alleged condition and practice. Although a local condition and practice could exist notwithstanding the failure or refusal (for whatever reason) of some employees to avail themselves of its benefits, here, where those continuing to work must have known of the position taken by those who departed, it is difficult to conclude otherwise than that, like the Company, this considerable number of Carpenters did not regard the usages of the past as conferring upon them a privilege of not being exposed to the elements.

Furthermore, the Basis of Rating of Carpenters (Standard) for the factor "Environmental Deterrents" refers to "Considerable heat, cold, and wetness" which is coded at 1-C-2. The element "1" refers to "Exposure to extremes of temperatures, heat, cold, wetness, or inclement weather. Sudden changes in temperature conditions". None of the other elements in the Manual refer to "wetness". It may well be, as the Union points out, that there are inside occupations similarly coded, the incumbents of which are not exposed to rain, but to other forms of wetness; but the Carpenter occupation having been classified as described, it is reasonable to conclude that the grievants were credited, in the job evaluation, for working on a rainy day.

These circumstances, together with the fact that it appears that the Carpenters' previous non-exposure to rain was due, not so much to any claimed right, privilege or prerogative of the Carpenters as to the Company's desire to advance its own interests in efficiency (which coincided and merged with the convenience of the Carpenters in working under dry conditions) compel the decision that there was no such local custom or practice here not to work on a rainy day as is protected by Marginal Paragraph 262.

Proceeding now, to a consideration of the application of Marginal Paragraph 102, it is noted that the grievants are entitled to the benefits the provision confers if they failed to work a full eight hour turn on the five "other workdays" only if "prevented through no fault of his [their] own." The grievants, here, were not "prevented" from working on November 14, 1957. They elected not to work rather than to work in the rain as did 39 of their fellow employees. There is no showing here that the conditions under which they were required to work were so unreasonable, intolerable or dangerous to health as to justify the election they made. It cannot be found, as it is required to be found in Marginal Paragraph 102, that they were prevented from working, though scheduled, "through no fault" of their own.

AWARD

This grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: August 20, 1958