INLAND STEEL COMPANY	)	
	)	Grievance No. 141
and	)	Docket No. IO-MM 311
	)	Arbitration No. 293
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 2099	)	Opinion and Award

Appearances:

For the Union:

Jack Powell, Staff Representative
Harold Matthews, President, Local 2099
Herbert Skoog, Grievance Committeeman

For the Company:

Henry Thullen, Esq., Attorney
John Hendricks, Labor Relations
Richard Annear, Mine Superintendent

This grievance presents the claim that five employees, Messrs. Matthews, Beer, Bouley, DuMolin and Grondin were improperly scheduled for work having been scheduled off during a week-day and having been required to do shaft-repair work on Saturday. Time and one-half their regular rates of pay for shaft-repair work is asked for hours worked on Saturday.

The facts are not in material dispute. Matthews, Bouley, Grondin and DuMolin in the week starting November 17, 1957 were each scheduled off one week day and worked at shaft-repairing on Saturday. (The facts with respect to the scheduling of Beer were somewhat different and will be set forth separately below.) The day off was either designated by the Company or chosen by the employee.

Matthews normally performs his services in the classification of Timberman. In the week referred to, he was off on Sunday, worked Monday through Thursday, was off on Friday and was assigned to shaft-repair work on Saturday. Bouley, classified and normally performing as a Pipeman-Underground Greaser was similarly scheduled, excepting that his off day was Thursday. Grondin normally an Underground-Pocketman and DuMoulin, a Miner, enjoyed their off days on Monday and worked at shaft-repair on both Friday and Saturday.

The Union asserts that this kind of scheduling is in violation of the Agreement. In its broadest aspect, the Union position is that scheduling of the character described is permitted by the Agree-

ment only with respect to "maintenance or repair" employees and that the grievants do not fall in this description.

Article III, Section 4 of the Agreement provides

> "When the mine is operating on a 40-hour week, and for operating reasons maintenance or repair work is required to be done when the mine is not operating, the Company may schedule any maintenance or repair employee to work on Saturday or Sunday on repair and maintenance work and may schedule such employee to lay off one shift during the first five (5) days of the week in order to equalize the time worked. In such cases, the Company shall give such employee and post notice of Saturday or Sunday work not later than the start of the second shift on Wednesday except in the case of emergencies or breakdowns, when the Company will give as much notice as possible." (Underscoring supplied.)

The Union states that the only "maintenance or repair employees" to whom the above quoted provision might apply are those listed in "Part B - Application to Mechanical and Maintenance Occupations", Section 2 (Mine Maintenance Occupations) Paragraph A, on page 101 of the booklet setting forth the 1956 Agreement. This supplement was negotiated in 1952 and covers both craft and mine maintenance occupations. Paragraph A reads as follows:

> "A. The mine maintenance occupations shall be understood to include all maintenance jobs (other than those considered in Section 1 hereof) in which the employees are assigned to inspection, repair, installation, rehabilitation, adjustment, lubrication, and similar tasks for the buildings and equipment, including replacement of operating units, service units and accessory equipment and facilities.
>
> "Such occupations are at present as follows:
> "Automotive Mechanic
> "Mechanic (Underground Mine)
> "Maintenance Mechanic
> "Shovel Repairman"

The Union relies on the theory that the listing of specific occupations necessarily excludes others not listed and exhausts the identification of maintenance and repair occupations. Accordingly, it contends that the grievants are not maintenance and repair employees within the meaning of Article III, Section 4.

The apparent force of this argument is dissipated by a textual analysis and by the Company's explanation of the genesis and purpose of Part B. First, it appears that of the four occupations listed in Paragraph A only one (Mechanic) is a recognized occupation at the underground Greenwood Mine, the other occupations being applicable only to open pit operations. To give Paragraph A the restricted application requested by the Union (to one occupation only) would hardly conform to the intent of Article III, Section 4, the substantive provision specifically permitting the scheduling practices in issue, which discloses in its text no internal purpose of referring only to Mechanics. It is also to be noted that although Paragraph A says:

> "Such occupations are at present as follows:"

and proceeds to name only "Mechanic" insofar as the underground Greenwood mine is affected, the same Paragraph A, above, states that

> "The mine maintenance occupations [in the plural] shall be understood to include all maintenance jobs [in the plural]"

for inspection, repair adjustment, lubrication, et cetera. Plural reference to "mine maintenance occupations" is also found in Paragraph C of Part B, Section 2. Thus, at the outset there is grave doubt that Paragraph A was intended to have singular application only to Mechanics as a maintenance job covered by its provisions despite the form of the listing of jobs. It is more probable that the occupations named were intended to be representative or illustrative of those which would be affected by other provisions of Paragraph A.

Second, the Company testimony and Paragraph B of Part B, Section 2 makes it clear that the primary intention of the parties in that Part was to deal with occupations having to do with mine maintenance with respect to which it was believed a progression of rates was desirable. Section 1 of Part B dealing with craft occupations, such as Blacksmith, Carpenter, Electrician, Machinist and Welder prescribes training periods and a progression of rates. It is evident that in Section 2 the parties were dealing similarly with maintenance jobs which did not fall within the most widely recognized crafts but for which a progression of rates would be required. In this connection it is deserving of note that although the six crafts named above were "designated" as craft occupations, in Part B, Section 1, Paragraph A, in the corresponding provision in Section 2 the parties "understood" the maintenance occupations "to include all maintenance jobs" in which the work described was performed; and instead of "designating" the covered jobs, the parties merely stated that "Such occupations are at present as follows:".

Timberman, Pipeman-Underground Greaser, Underground Pocketman and Miner are not occupations for which a progression of rates has been provided. However they might be categorized and denominated, they do not fall within that special class of occupations with respect to which Paragraph A was addressed. Accordingly, a listing in Paragraph A which states what is a mine maintenance occupation, but does not specifically include these occupations does not have the effect of excluding other maintenance and repair occupations, not bearing progressive rates of pay, from consideration as "any maintenance and repair occupation" which may be scheduled in accordance with the provisions of Article III, Section 4.

The Union, however, has several strings to its bow. It states that even if the grievant's occupations are not regarded by the Arbitrator as excluded from "maintenance and repair occupations" by Part B, Section 2, Paragraph A, there is no justification for regarding DuMoulin, a Miner and Grondin an Underground Pocketman as maintenance and repair employees within the meaning of Article III, Section 4. These occupations, says the Union, are production, not maintenance or repair jobs. An inspection of the job descriptions for these occupations supports this thesis inasmuch as it sets forth no typical duties of maintenance or repair character such as are contained in the job descriptions for Timberman, Pipeman-Underground Greaser and Shaft Repairman. With respect to Grondin the Company answers that from time to time, as it appeared to it that shaft repairs might be necessary, it assigned a specific and "regular" crew of men to do shaft inspection and repair and that such a crew normally included Grondin. I am not persuaded that this practice, not objected to in the past, had the effect of converting Grondin, an Underground Pocketman into a "maintenance and repair employee" within the meaning of Article III, Section 4. It is clear that the Company enjoys a considerable degree of latitude and flexibility in the occasional assignment of employees to occupations that they do not customarily or normally fill. Its right to so assign, however, not in issue here, does not result in converting a Miner or an Underground Pocketman into a maintenanceman and repair employee, at least in the absence of a showing that much more than a very small percentage of his services, as shown here was of a maintenance and repair character. Accordingly, I find that DuMoulin and Grondin, so far as their formal classifications and the predominance of their work are concerned, were not maintenance and repair employees and may not be scheduled as specifically provided in Article III, Section 4.

The Union also objects that the scheduling practices referred to are in conflict with the provisions of Article III, Section 7 because they constitute "arbitrary variations from an employee's schedule of work days.* * *" I do not find any merit in this contention. The fourth paragraph of Article III, Section 4 specifically and pointedly permits the practices in issue in this case and takes precedence over the general provisions in Section 7.

In the light of the discussion herein, it is evident that the grievance has merit only with respect to DuMoulin and Grondin, production employees.

The Company contends that if the Union should prevail as to the contract interpretation contended for there is no provision of the Agreement specifically directed to what relief should be granted for a violation of the scheduling provisions involved here. It observes that Article III, Section 2 (d) provides

> "One and one-half times the employee's regular rate of pay shall be paid for hours worked on the sixth or seventh days of a work week after having worked on the five (5) preceding days of that work week * * *" (Underscoring supplied.)

DuMoulin and Grondin clearly do not fall within this provision. Neither grievant "worked" five days preceding Saturday, November 23, 1957 in the work week in question. The provision last quoted also provides that if an employee has not worked a total of 40 hours on the five preceding days due to specified types of excusable absence, time and one-half the regular rate shall be paid only for those hours on the sixth and seventh days which are in excess of 40 within the work week. The Union relies on this provision but it is plain that its purpose and application is foreign to the situation presented here. None of the employees have worked in excess of 40 hours on the week in question.

The Agreement has been carefully examined but no provision has been brought to light which entitles an employee to a time and one-half rate for work on Saturday, as such, and without regard to other qualifying conditions. The Arbitrator has no authority to add to the Agreement (Article V, Section 3) on the ground that equitable considerations urge such action.

Frank Beer, like Matthews, a Timerman, and therefore a maintenance and repair employee within the meaning of Article III, Section 4, is also a grievant in this case. On the week in question he appears to have been on vacation Sunday through Thursday. He worked on Friday but did not perform shaft-repair work on Saturday not having been scheduled therefor. It developed at the hearing that the Union presents no claim for pay to Beer with respect to Saturday in the week beginning November 17, 1957, but does claim he is entitled to time and one-half his regular pay for other Saturdays on which he performed shaft-repair work, after having been laid off on one day during the week. No adjudication, accordingly, is made of Beer's claim in this arbitration proceeding with respect to his rights to compensation on November 23, 1957. Insofar as work on other Saturdays is concerned, as a Timberman, the decision in this case to the extent that it affects Matthews would establish a rule applicable, when appropriate, to Beer.

In conclusion it might be observed that the Arbitrator, in reaching this decision has carefully examined the award of Arbitrator Peter M. Kelliher dated March 8, 1954 submitted by both parties and the extensive history of Article III, Section 4 of the Agreement submitted by the Company in its written statement. Inasmuch as the issue between the parties, as it developed at the hearing concerned the matters discussed at length above more than it did the said award and historical material, it is not deemed necessary to comment at further length, herein on that award and the historical material.

AWARD

1. The grievance is denied with respect to the claims of Matthews, Bouley and Beer.

2. The grievance is granted with respect to DuMoulin and Grondin but only to the extent of deciding that Article III, Section 4 does not confer a right upon the Company to schedule these production employees to perform maintenance and repair work on Saturday, the fifth day worked in the work week, such employees having been scheduled off on one of the previous week days. The grievances of DuMoulin and Grondin are denied insofar as they request to be paid at the rate of time and one-half their regular rate for work performed on November 23, 1957.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: 12-17-58