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| In the Matter of Arbitration between | ) | Grievance Nos. 3-58 and 4-58 |
| | ) | Docket No. SC-Cleveland-305 |
| INLAND STEEL CONTAINER COMPANY | ) | Arbitration No. 301 |
| and | ) | Opinion and Award |
| UNITED STEELWORKERS OF AMERICA Local Union No. 2732 | ) | |

Appearances:

For the Company:

William F. Price, Attorney
L. M. Ansley, Plant Manager
R. A. Wortman, Personnel Manager
James Mills, General Foreman

For the Union:

Joseph Kanecki, International Representative
Chas. Heyduck, Local Union President

Anton Kocjancie and Frank M. Hocevar, a) Crane Operator and, b) Utility Crane Operator and Scrap Handler, respectively, in the Company's Barrel Department, the grievants, seek one day's pay for Thursday, February 6, 1958 during which they claim that work normally assigned to them was performed by others.

The basic facts are not in dispute. On Wednesday, February 5, 1958, during a period when the plant was not working a standard 40-hour week it was determined by the Company that the Barrel Line would be scheduled off for the following day, February 6, 1958, but that the Pail Line would work a regular eight hour shift on that day. The grievants were scheduled off for February 6, 1958 along with other Barrel Department employees.

During the course of the shift two Pail Department employees, a Setup Man and a Slitter Operator, performed crane work. There seems to be no question that they performed the kind of work normally done by the grievants. The grievants' job duties included picking up steel from stock in the Steel Room by means of an overhead crane operated by a button box on the floor of the plant, moving it to a pail or barrel buggy or dolly, and then pushing the buggy to the beginning of the production line. The Steel Room

is located between the two departments. The crane movement is from 20 to 40 feet and the buggy or dolly is moved approximately 30 feet to the point where it is needed.

On the day in question the two Pail Department employees, according to Company records, moved seven bundles. Four were loaded at the Steel Room and moved to the Pail Department; three originated in the Pail Department and were taken to the Steel Room. The Company witness estimated that it took roughly five minutes to move a bundle and accordingly, less than one hour of work (spread over the day) was involved.

In justification of assigning to others work normally and regularly assigned to the grievants, the Company relies on practical considerations and on legal arguments.

First, it points out that there have been numerous occasions in the past when Pail Department personnel operated the grievant's crane. Frequently the Barrel Department closes at 3 P.M. and the Pail Department continues operations until 3:30 P.M. When additional steel is needed by the Pail Department beyond that which had been brought in by the grievants to anticipate its needs, Pail Department employees who are familiar with the mechanism of the crane, bring the sheets in from the Steel Room. Pail Department employees also do this work in emergencies or when the grievants are not immediately available because they are occupied elsewhere in the plant. The occasion for the performance of grievant's crane work by Pail Department employees regularly arises, it was estimated, on the average of about once a week.

It does not appear to the Arbitrator that the practice referred to in the preceding paragraph is apposite, nor is it a proper test of the legality of the acts complained of here. The practice relied upon by the Company was observed when the grievants were scheduled for work and were performing work for which they were compensated on days when Pail Department personnel operated the crane. The instant case is clearly distinguishable in that the grievants were scheduled off and received no compensation for the day. Furthermore, it does not appear that the regular crane operators objected to the procedure followed by the Company.

It is not suggested here, as it was by the Union representative at the hearing, that such occasional assignments to Pail Department employees, in the past was wrongful. Apparently this flexibility in assignments by the Company has been enjoyed for some time without any protest or grievance having been filed. It is suggested, however, that having had the Union's tacit acquiescense in the past to a practice that serves its operating needs and avoids the payment of overtime, the Company does not have standing to insist that it may deliberately schedule the Barrel Department crane operators off for the day and have Pail Department employees operate the cranes.

In this connection brief comment might be made on the precedents cited by the Company in its brief on page 9. Arbitration No. 260 is not in point because in that award the Arbitrator had to deal with a dispute in which the grievants, far from claiming that others performed their work, contended that the work that they were being directed to perform was not within their own job duties and that they should not be assigned thereto. The award in Arbitration No. 262 dealt with a similar situation which has no application to the problem presented here.

Second, the Company states that when only one hour or less of work was required on February 6, 1958 "it can hardly be said that the Company was acting in an unreasonable manner in not scheduling the grievants for work on that day". This argument is not persuasive. The Company knew that the Pail Department needed to be supplied with steel and that more than a minimal amount of time would be consumed in performing this work. It knew that the primary functions described in the grievants' Job Description and Classification had to be performed on February 6, 1958. The Company was under no legal compulsion or duty to schedule the crane work to be performed on February 6. It might have closed down the Pail as well as the Barrel Department, or it might have stocked the Pail Department with sufficient steel on February 5 to avoid the necessity of crane operations on February 6. But having planned to have the steel moved by the Pail Department employees while the grievants were scheduled off, it cannot avoid its obligation to the grievants for the day's pay.

The Company's principal legal argument is that there is no provision in the Agreement which prohibits the action complained of in this case. The statement is correct as far as it goes: there is no provision which specifically deals with this subject. The Agreement states that it does not guarantee hours of work per day or per week (Article IV, Section1) and it reserves to the Company "the right to relieve employees from duty for lack of work or other reasonable cause" (Article III, Section 6). Here, however, although there was less work available for the grievants than they would normally perform (the Barrel Department having been scheduled off) it cannot be found that there was such "lack of work" (Article III, Section) in their occupations as described and classified.

The Company's undoubted right to lay off has breadth and, in the nature of things, must be accorded a considerable degree of latitude. It does not extend, however, to the layoff of an employee when it knows that his type of work will need to be done and that that work will be performed by employees in another occupation. The Company's right to assign work to one in another classification does not carry with it the power to deprive the employee whose work has been assigned his day's compensation.

The Company's position was dictated, understandably, by the special situation it faced on February 5. Superficially considered, it looks like prudent and efficient management to have arranged matters as it did to meet an unusual situation. The problem, however, must also be viewed in broader compass. If the Company should be sustained here, might it not be encouraged by the Arbitrator to follow the logic of this decision in ways that it probably did not envisage on February 5? Thus, at its pleasure, and whenever the work load for the Crane Operators is expected to be below normal it might lay them off. Pail Department employees would then take over the crane operating duties not only in emergencies, or when the grievants are otherwise occupied in the shop, but in their absence, even though they were absent because management told them to stay away. The decision here is prompted by concern and respect for the integrity of the job description and classification system established by the Agreement itself, and which would be undermined by approval of the acts complained of in the grievance. It has been observed above, and it bears repitition, that we are not dealing here with restrictions on job assignments across classification lines, but, rather, with the question whether the employee whose work was done by an employee in another classification is entitled to pay for the day.

Finally, the Union claimed the operation of the crane was unsafe when conducted by employees other than the grievants. This complaint seems never to have been voiced during the long period during which Pail Department employees have operated the crane. In any event, it has no bearing on whether the grievants are entitled to a day's pay. If it is claimed that the Pail Department employees are being subjected to undue hazards by the Company's assignments, a complaint to that effect might more reasonably be expected from them.

AWARD

The grievance is sustained.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: January 28, 1959