INLAND STEEL COMPANY	)	
	)	Grievance No. 12-F-78
and	)	Docket No. IH-338-329-6/9/58
	)	Arbitration No. 304
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
Wm. Gaels, Grievance Committeeman

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
R. J. Stanton, Assistant Superintendent, Labor Relations
J. L. Federoff, Divisional Supervisor, Labor Relations
S. C. Wilson, General Electrical Foreman

The question for decision is whether the Company improperly and in violation of the Agreement demoted J. Dunn from the occupation of Mechanical Repairman to Janitor.

The grievant was hired on July 11, 1944. At that time it was known to the Company that he had an inguinal hernia. On July 1, 1950, he entered the Mechanical Sequence of the Galvanizing Department as a Maintenance Handyman. On August 27, 1956, he was examined for "physical evaluation" and the Medical Department of the Company recommended "that this man avoid truly strenuous work". This physical evaluation and recommendation, at that time, apparently had no impact on his employment, and he subsequently promoted to Mechanical Repairman. The record contains testimony to the effect that he was denied promotion because of his physical condition but that after further examination at the clinic the denial of promotion (or waiver) was withdrawn. The details as to just what occurred in connection with this "denial" or "waiver" are not clear, but it was established that the recommendation of the Medical Department remained in effect at all times and was unchanged.

On August 30, 1957 a grievance was filed on behalf of J. Dunn alleging that another employee had been improperly promoted to the occupation of Millwright in his stead. This grievance was processed up to the Third Step. The Medical Department reexamined the grievant on December 2, 1957 and decided that the medical restriction should not be removed. Subsequently the grievant's duties as Mechanical Repairman in the light of the medical restriction were reviewed by operating supervision and the Medical Department and it was decided that the grievant was not physically fit to continue in the occupation of Mechanical Repairman or in any of the lower rated jobs (Maintenance Handyman or Maintenance Helper) in the Mechanical Sequence. He was then demoted to a job of Sweeper (or Janitor) in which the Company believed his duties would not transgress the medical restrictions. In this job he does nothing but sweep and remove blocks of wood. The original grievance was permitted to lapse and on February 19, 1958 a new grievance was filed claiming unjust demotion. It is this latter grievance that is involved in this proceeding.

The Union claims a violation of Article IV (Plant Management) and asserts there was no just cause for this demotion. It characterizes the Company's action as "paternalistic" and asks why, if the grievant was physically fit to perform his sequential duties for eight years during which it was known he had an inguinal hernia, he cannot perform them now. It observes that there has been no occurrence or change of circumstances or condition which demonstrates his present physical unfitness and that the fact that the Medical Department claims that further injury "might occur to J. Dunn" or any other employee does not mean that it will occur. The Union asserts that "the Company must show a real and present danger to the employee before they can demote him because of a change in his physical condition, if there has been a change" and this cannot be done on the "remote possibility of such change".

The Union points out that it is gravely concerned that if the Company's position is sustained the Company could call in employees with long service for physical examination and the Medical Department might then place restrictions on their continued employment that would result in drastic and wholesale demotions or loss of employment.

The fact that, although the Company had record knowledge of his hernia condition,for many years the grievant has been permitted to work undisturbed at occupations now deemed injurious to his health, lends color and weight to the Union's position. The Company had no answer to the question why its action has been so long delayed except to observe that when the grievant was hired the Company did not have the highly efficient medical facilities run by the highly trained professionals it presently possesses in its Medical Department. This is not an entirely satisfactory answer, because it is evident that notwithstanding the physical

evaluation of August 27, 1956 the grievant was permitted to return to his job as Mechanical Repairman and it is fair to assume he would have continued to remain in that occupation, undisturbed, if he had not been so imprudent as to grieve that he had been passed over for the Millwright's job. The record justifies the conclusion that it is only because of the handling of that complaint in the grievance steps that the necessity of applying the medical restrictions was recognized. Thus, if the Company is under an affirmative duty, as it claims to be,

> "to continue to make all reasonable provisions for the safety and health of its employees." (Article XI, Section 1)

it did not fulfill that duty until, at long last, it decided to demote the grievant on February 2, 1958.

The delay in acting, however, (assuming that action was justified) does not mean that the Company has lost its responsibility and rights. It affords an opportunity to the Union, however, to raise the questions whether the Company is acting in good faith and whether the disability is, in truth, one which justifies the demotion at this late date.

I am satisfied that, in this case, the Company had just cause to remove the grievant from his occupation as Mechanical Repairman and to demote him to the occupation he presently fills, the duties of which are within the limits of the medical restriction. This conclusion is based on the testimony of Dr. Glenn Gardiner, the Company's Medical Director. Dr. Gardiner's testimony made it amply clear that the inguinal hernia condition of the grievant is one that makes it hazardous for him to engage in "truly strenuous work". That the work of Mechanical Repairman is of that character is evidenced by the nature of typical duties detailed in the Job Description. The factor of physical strength is rated in the job classifications on the basis of

> "Handle, lift and carry heavy tools and materials."

This factor was evaluated at 1 D 3 which means that it was regarded as an "indispensable qualification" of the job and "applicants would not be selected unless possessing qualification to an exceptionable degree" and that applicants have physical strength for

> "Maximum lifting required up to 200# or equivalent work."

A Mechanical Repairman testified, to be sure, that he has never been required to lift as much as 200 pounds and that the heaviest weight he has lifted was "no more than 100 pounds" and this seldom. He also testified that chain falls and hand cranes are available

for lifting heavy objects. This testimony does not negate the possibility, however, that the grievant as a Mechanical Repairman may be called upon, in the normal course of his described typical duties, to exercise force that could be most dangerous to one suffering from an inguinal hernia.

Further, the Mechanical Repairman occupation is classified at 4A 3C9 for Physical Exertion with the basis of rating stated to be

> "Handle heavy tools and material, climb, etc. Adjust, repair, dismantle, assist to inspect, lubricate, work with light tools etc."

The 4A rating refers to working up to and including 1/4 of total time at

> "Above normal exertion, i.e., work with heavy tools, handle medium weight material at moderate pace or light weight material at sustained pace or fast speed, perform some heavy work at intervals."

and the 3C rating refers to working up to and including 3/4 of total time at

> "Normal exertion, i.e., operate heavy controls, work with light tools, handle light weight material."

As I understand the professional opinion of Dr. Gardiner in the record, the conclusion appears inescapable that the job from which the grievant was demoted, both on the basis of evaluation and actual performance is one that is extremely hazardous for one with an inguinal hernia.

It should be understood that we are not dealing here with such a condition as was involved in Arbitration No. 300 (Juanita York), alleged to have justified the refusal of the Company to permit the grievant to return to her job. In that case there was a conflict of two highly competent professional opinions as to the risks involved in returning the grievant, who had a laminectomy performed, to her job as Toolkeeper. The finding was made there that the testimony of the Medical Director based on general experience in industrial health must give way to the equally competent testimony of the orthopedic surgeon who had operated upon and treated Mrs. York and, presumably had the better specific knowledge of her back condition. In this case, it should be noted, there is no conflict of competent professional testimony, and it appears to be plain that the grievant would subject himself to grave danger of further injury if he continued in his former job. The fact that he had been so fortunate as to escape such injury in the past and that the Company had not acted to discharge its responsibility until a relatively late date does not change this important fact. In matters relating to the protection of health, or the avoidance of physical

hazard, there is no known statute of limitations which bars an employer from taking reasonable precautions. It might also be noted that this is not one of those situations in which the hazards and risks forced by the grievant can be equated with employees who do not have an inguinal hernia. The dangers of injury he faces while he has that condition are clearly greater than those faced by employees who have no inguinal hernias.

Finally, the concern of the Union that the Company, with this decision in its favor, could grossly abuse its system of medical examinations by utilizing them to disqualify as physically unfit senior employees known for many years to have had physical disabilities is not to be lightly dismissed. The kind of abuse referred to by the Union as a possibility could be resorted to should the Company desire to act with impropriety under the cloak of its duty "to make all reasonable provisions for the safety and health of its employees". There is no evidence, however, that the Company has abused its powers in this way in the past nor that it is likely to do so in the future. The good faith performance of its duties to date and the vigilance of the Union are strong guarantees that the kind of abuse referred to in this case will not take place.

One final word. There was testimony that the grievant could very likely get relief from his present physical disability by submitting to surgery, and that he would thereby probably be out of work for a period of several weeks. If among the facts before us was one that he had submitted to such corrective surgery (as conceivably he may still do), and that it had been successful, this would weigh heavily in his favor, and, indeed, might result in agreement by the Company's Medical Department that he is qualified to perform the type of work expected of a Mechanical Repairman.

AWARD

This grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: February 25, 1959