

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1010

)
) Grievance No. 10-F-20
) Docket No. IH 326-317-5/13/58
) Arbitration No. 308
) Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
J. Stanton, Assistant Superintendent, Labor Relations
Miles Riffle, Divisional Supervisor, Labor Relations
Art Morris, General Electrical Foreman, Plant #1 Mills

For the Union:

Cecil Clifton, International Representative
Joseph Wolanin, Secretary, Grievance Committee
Wm. Bennett, Grievance Committeeman

The grievance filed by Charles Knight asks for four hours of premium pay for work performed on January 15, 1958. Knight worked as follows in the weeks beginning January 5 and January 12, 1958:

<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>TH</u>	<u>F</u>	<u>S</u>		<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>TH</u>	<u>F</u>	<u>S</u>
<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>		<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>17</u>	<u>18</u>
<u>W</u>	<u>W</u>				<u>W</u>	<u>W</u>		<u>W</u>	<u>W</u>	<u>W</u>	<u>W</u>			<u>W</u>

The claim, based upon Article VI, Section 2 C (1) (d) (Marginal Paragraph 103), is for overtime at the rate of one and one half times the regular rate of pay for hours worked on the sixth work-day "of a 7-consecutive day period during which the first five (5) days were worked whether or not all of such days fall within the same payroll week". Paragraph 103 proceeds to except hours "worked pursuant to schedules mutually agreed to as provided in Subsection D of Section 1 - Hours of Work" (which in turn excepts from the normal work pattern schedules deviating therefrom established by agreement between the Company and a grievance committeeman) and then states

"For the purposes of this Subsection C (1) (d) all working schedules now normally used in any department of any plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days prior written notice thereof to the Company."

Basically, this case presents for decision the question whether Knight worked a schedule which was normally used on or about August 5, 1956 [~~now~~ normally used] and which was therefore "deemed to have been approved" by the grievance committeeman. If an affirmative answer is given, the case falls within the express exception to the requirement that overtime compensation be paid; if negative, the Agreement requires that the grievance be upheld.

Knight was a Motor Inspector Helper in the Electrical Sequence of Plant #1 Mills. On the Promotional Sequence Diagram the Motor Inspector Helper job stems from the Labor Pool and the sequence divides into two branches. At the top of one branch is Motor Inspector Leader which is scheduled for 21 turn coverage; then below that occupation is Motor Inspector, 19" and #1 Billet, which "normally" is scheduled for 21 turns; then Motor Room Tender #36, the schedule for which varies and depends on the operation of the mill; then Motor Room Tender 19", the schedule of which varies from nine to 15 turns; and then Motor Room Tender #1 Billet, the schedule for which varies, similarly. At the top of the other branch is the occupation Motor Inspector 24" B.M. which "normally" is scheduled for 21 turns "but varies" and then Motor Room Tender 24" the schedule for which varies between 15 and 21 turns.

Three Motor Inspector Helpers are ordinarily scheduled around the clock, depending on operations. The remainder of the Motor Inspector Helpers are scheduled on a day turn basis, as needed, and Labor Pool employees are upgraded, as needed, to fill vacancies. According to the record in the case, Motor Inspector Helpers are frequently upgraded to fill temporary vacancies around incumbents of higher rated jobs because of waivers or denials of promotion. The testimony discloses that the variation in the operation of the mills results in a very complex and difficult procedure in scheduling the personnel in the sequence. Thus, although the pattern of occupational scheduling showed considerable regularity as to Motor Inspector Leader which customarily was on 21 turn coverage, it seems that no such regularity of pattern was characteristic of the other occupations, particularly of the Motor Inspector Helpers who were upgraded temporarily, as needed, to fill vacancies. One other factual observation should be made at this point, namely, that prior to adjustment by the Company to the holding in Arbitration No. 167 and associated cases dealing with sequential standing in "extended operations" it was customary to list four employees for the top jobs in which 21 turns might be required; following that adjustment three employees were so listed and the employees not so listed were downgraded.

The Union's affirmative case was based on testimony of the Grievance Committeeman that the schedule normally used for Motor Inspector Helpers was a 4-2, 5-1 schedule over a 21 week cycle. William Bennett, the Grievance Committeeman, testified that prior to the adjustment to Arbitration No. 167 when some employees

desired premium pay for a sixth or seventh consecutive day worked over a period spanning two pay periods and he approached management officials thereon, he had been informed then that at a time antedating his assumption of duties as Grievance Committeeman the 4-2, 5-1 workschedule had become an "approved schedule". Accordingly, he stated, he did not press the claims of his constituents. However, his testimony continued, when the Company adjusted to Arbitration No. 167 it abandoned the normal and previously approved schedule, and this having been done, the Company was no longer exempted from the obligation to compensate at premium rates for the workschedule set forth at the head of this opinion. The Union takes the position that it never officially acquiesced in the construction that resulted in the failure to press the claims referred to by the Grievance Committeeman and that there has not been, in fact, any schedule of work applicable to the grievants which was "normally used" and which should be "deemed to have been approved". It charges the Company with inconsistent applications of the Agreement having the effect of depriving employees of premium pay in that sometimes it refers to schedules of groups (in determining whether a working schedule was "normally used in any department") and sometimes refers to individuals. While expressing a strong preference for the interpretation that refers to the schedules worked by individual employees, it states that it is important that the Permanent Arbitrator lay down a rule that will result in consistent applications.

The Company's position as expressed at the hearing is that ordinarily the group or sequence schedule would control, but it recognizes that there may be instances of regular individual deviation from the group schedule that would result in a finding that an individual employee normally worked a schedule that would bring him within the exception. The Company, in Exhibit B attached to its Statement, showed some instances of Motor Inspector Helpers working six or more consecutive days crossing payroll weeks from April 30, 1956 to June 24, 1956. It draws the conclusion from this that it was normal for these Helpers, working in their own occupation or filling temporary vacancies, to work schedules deemed to have been approved, and therefore excepted from the requirement of premium pay. Thus, Knight, the grievant here, is shown on that Exhibit to have worked nine consecutive days in the payroll weeks of April 30 and May 7, 1956 and eight consecutive days in the payroll weeks of May 14 and May 21, 1956.

This case, on its facts, differs sharply from Arbitration No. 227 cited and quoted by the Company in its presentation where, although there were a miscellany of work schedules used, it was stated that

"The evidence in the record dispels any doubts that under the circumstance of only one down turn a week [in the 44" Hot Strip Mill] on the 7-3 Sunday turn, the Company, in fact, on numerous occasions scheduled A and B crews

for six or seven days across a payroll week.
* * * It seems evident that the work pattern under discussion was not only a way of scheduling but the regular and customary way of scheduling when the mill was to be operated over an extended period with only one 7:3 Sunday turn down. Accordingly I find that it was a schedule normally used under the stated circumstances."

No such regularity of pattern is discernible here or is claimed by the Company. It is only urged that there were situations arising from time to time, as shown by a rather small sample of occasions in the Exhibit, when the Motor Inspector Helpers did work six or seven days in two payroll weeks. The Company asserts, however, that this demonstrates that such a schedule was "normally used" in the department and should be "deemed to have been approved". The facts in the record, however, unlike those adduced in Arbitration No. 227 do not support the conclusion desired. There is no showing of custom or of a regularity of pattern in scheduling these employees that persuades that it was "normal" to require them in any given time cycle or period to work six or seven consecutive days across two pay periods. The fact that they did so work when the mill operations or the existence of temporary vacancies which needed to be filled dictated the requirement, does not, in my judgment, establish the "normalcy" of the alleged schedule.

The Company would have it that when Motor Inspector Helpers are upgraded to fill temporary vacancies with some frequency and, in doing so, work, from time to time, six or seven consecutive days across two payroll weeks, they are, in effect, "normally" scheduled therefor. Thus, it is insisted by the Company (referring in the first instance to the impact of Arbitration No. 167 and the associated cases)

"These schedules have not changed. In other words we have a variety of schedules. It's the Company's position that the operation required this and that included in this variety of schedules are many instances - more than we have submitted - many instances where we have crossed the payroll schedules [sic.] * * * and we deem this to be included in the terminology as working schedules now normally approved in the '56 Agreement, pursuant to Paragraph 103."

I do not agree. The individuals in question would ordinarily be scheduled not for the occupation in the higher grade in which the vacancy occurred, but in their own occupations. Their temporary upgrading (and their working on the sixth or seventh con-

secutive day) depends on several contingencies among which is the level of mill operation, the incidence of absenteeism, et cetera. Frequency of occasion does not, by itself, establish the normal character of a schedule. By dictionary definition, "norm" means "a rule or authoritative standard"; "normal" means "according to or squaring with a norm; constituting, conforming to, not deviating or differing from a type or standard; regular, usual". The schedules worked by the Motor Inspector Helpers, so far as this record reveals, are not characterized by the attributes of "normal" described in the definitions.

The primary purpose of an opinion and award in an arbitration case is to resolve the issue presented. I share the reluctance of the representative of the Company, expressed at the hearing to lay down any general rules, as requested by the Union, as to whether the yardstick in Marginal Paragraph 103 applies exclusively to group or to individual schedules "deemed to have been approved". In doing so I should be adjudicating fact situations not before me and acting on premises and considerations to which the parties have not had an opportunity to address themselves. Predictability and the establishment of uniform rules of construction and application have great value, as the Union has indicated, but there is too great a hazard in prescribing rules of thumb for fact situations that cannot be foreseen. It is enough that in this case the pattern of scheduling has not been shown to have been such as to justify the finding that Knight (or the Motor Inspector Helpers, as argued by the Union) had a working schedule that was "normally used" in the department at the time the Agreement was made effective ["now normally used"]. It follows that whatever it was that the Grievance Committeeman may have been told and whatever interpretation he may have given to the facts when the previous claims were made, the practice of working the sixth or seventh consecutive day across two payroll weeks did not constitute a schedule "deemed to have been approved", and, accordingly, did not fall within the exception to the requirement in the first sentence of Marginal Paragraph 103 that the overtime rate be paid.

AWARD

The grievance is sustained.

Approved:

Peter Seitz,
Assistant Permanent Arbitrator

David L. Cole,
Permanent Arbitrator

Dated: March 12, 1959