INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 13-F-40
Docket No. IH-339-330-6/9/58
Arbitration No. 311

Opinion and Award

use for #3 Coil Stocker Grievance

Appearances:

For the Company:

William F. Price, Attorney
John I. Herlihy, Superintendent, Industrial Engineering
Kenneth H. Hohhof, Supervisor, Industrial Engineering
William A. Dillon, Assistant Superintendent, Labor Relations
Lockwood Lyon, Assistant Superintendent, 76" Hot Strip Mill

For the Union:

Cecil Clifton, International Representative
Fred A. Gardner, Chairman, Grievance Committee
J. Wolanin, Secretary, Grievance Committee

This grievance, filed January 31, 1958, questions the appropriateness of Incentive File 76 - 4112 - 1, Revision 2, and requests that the Company develop a new incentive plan and pay the aggrieved employees average earnings based on the earnings of the 90 day period prior to January 6, 1958 until new rates have been settled.

The employees involved are in 29 occupations in the Mill Crew of the 76" Hot Strip Department. The incentive plan was originally proposed by the Company on April 21, 1950. The operation essentially covered a three-furnace operation, but provision was made for a 15% allowance when only two furnaces were in operation for the entire turn. The Union objected to this, and it was agreed the allowance should be 20%, to apply for "the time during which no more than two furnaces are in operation whenever such time equals four or more consecutive hours." The Union attacked the appropriateness of this plan under Article V, Section 5, and on July 1, 1953 Arbitrator Lehoczky in Arbitration 81 directed a certain adjustment. On August 3, 1953 the plan thus adjusted was installed, effective as of March 19, 1951.

The 20% allowance when only two furnaces operate applies to 91% of the production; large pattern floor plate, which is about 5% of production, receives an allowance of less than 10%; and items constituting about 4% of production receive no allowance.

On January 6, 1958, as part of a modernization program, the Company began dismantling the #1 furnace, taking it permanently out of operation, and from that date to March 25, 1958 only two furnaces were in use; subsequently the first new furance was used together with the remaining two old furnaces. On April 13 these two old furnaces were shut down and were dismantled. On June 14 the second new furnace started in operation, and on July 22 the third.

When the first old furnace was taken permanently out of operation in January, the Union urged that a new or revised incentive plan was required, but the Company disagreed and this grievance followed.

Two questions are presented: (1) was the existing incentive plan rendered inappropriate by the operating changes made on January 6; and (2) were the employees entitled to be guaranteed their average earnings based on the prior 90 day period until the new incentive rates were settled?

The Union raises three grounds for holding that the plan became inappropriate on January 6. The first two are that the product mix was materially changed and that increased delays of various kinds were encountered. Without going into great detail, the evidence submitted by the Company convincingly shows that these allegations are contrary to the facts. In fact, the section changes decreased in number in January, 1958 as compared with the year 1957, and the same was true of roll changes and of mill delays in general.

The real question is whether the plan became inappropriate when the #1 furnace was permanently taken out of operation, since the operation contemplated in the incentive plan was a three-furnace operation.

The Company's position is that since the plan made specific provision for two-furnace operation beyond four consecutive hours, it was entirely appropriate as it stood for the two-furnace operation after January 6. In fact, it is the Company's view that the Arbitrator has no right to tamper with the incentive plan, which, by virtue of Article V, Section 4, was in effect an agreement of the parties and as such protected against alteration by the Arbitrator by the restrictions contained in Article VIII, Section 2 (Paragraph 200).

The Arbitrator is constrained by Paragraph 200 not to alter the provisions of the basic Agreement. At the same time he is directed in Article V, Section 5, particularly Paragraph 59, to consider a request of the Union to inquire into the appropriateness of an incentive plan when there are new or changed conditions, for the purpose of seeing that a new incentive plan is installed, in the light of these conditions, which will provide equitable incentive earnings.

The Union offered testimony, not contradicted by the Company, that the two-furnace allowance was understood to apply only to situations in which one furnace was out temporarily because of breakdown or similar reasons. The Company's answer was simply the technical one that "four or more consecutive hours" literally would cover a period of months.

There are five points of significance to consider in this connection. (1) The incentive plan was drawn to cover normally three-furnace operation, with a total capacity of 200 - 225 tons per hour, and the Company has argued in the past that the equitability of such plans is to be judged by full normal operations rather than by temporary partial operations. (2) When the originally proposed allowance of 15% was raised to 20%, it was also agreed to make it applicable to periods of four hours or more instead of the full turn, as originally desired by the Company, indicating that short-range two-furnace operations were in the minds of the parties.

(3) If the parties had contemplated a more permanent type of two-furnace operation beyond the kind encountered when there is a breakdown, it would have been much more logical and reasonable for them to have used the figure of 33 1/3% rather than 20%, because this would have tended to approximate their three-furnace earnings, and they would not have excluded from even the 20% allowance some 9% of the total production. (4) In testing appropriateness of incentive plans the guide laid down in the Agreement is whether the earnings produced are equitable in relation to certain designated comparables, and it is inconceivable that the parties could have intended to have earnings paid during a period of mechanical change-over serve as a measure of what employees should normally earn under a new or revised incentive plan. This could be the effect if the Company's position is sustained, for subsequently the Company decided to install a new incentive plan when the new furnaces began to be used, and one of the direct comparisons set forth in Article V, Section 5 to determine whether earnings under such new plan are equitable is "the previous job requirements and the previous incentive earnings." (5) Finally, to repeat, the testimony of one of the Union witnesses who participated in the discussions in 1951 when the proposed plan was under consideration was that the two-furnace allowance was intended to apply only to temporary conditions, and no Management witness undertook to dispute this. It was for this very reason that the Union did not raise any question concerning the allowance in Arbitration No. 81.

It is of interest to note that as of March 25, 1958 the Company issued a supplement to this incentive plan. In this supplement it stated that the new furnace has a rated capacity approximately twice that of an old furnace, and when old #2 and #3 furnaces are removed from the line, the full capacity of new #1 furnace will be useable and at that point the two-furnace provision of the existing plan would be made applicable to the operation, and that when two or more new furnaces are used the incentive plan will be inappropriate. The departure from the literal application of the two-furnace provision which the Company maintains is binding on the Union and on the Arbitrator is significant.

At about the same time the Company agreed to maintain the earnings averaged in the first quarter of 1958 as a form of "special guarantee." The Union at the hearing contended that it thought the Company was doing this pursuant to the requirements of Article V, Section 5, sub-section 5 (Paragraph 58), and objected to using the depressed earnings of that quarter rather than the higher earnings of the last quarter of 1957.

It cannot be decided in this case what the incentive earnings should be under the two-furnace operation which started January 6, 1958. Obviously, the workload, which was lightened, will be a factor to consider. It is sufficient to hold that the two-furnace allowance provided in the incentive plan was not meant to cover the changed condition which occurred on January 6, and that the plan was therefore inappropriate.

The final question presented, however, by the Union's claim is that the employees are entitled to receive in the interim earnings not less than their average hourly earnings under the incentive plan in effect during the three months immediately preceding the installation of the new incentive.

This means that it is urging that the average earnings of the 90 day period prior to January 6 (essentially the last quarter of 1957), and not those of the first quarter of 1958, should be used.

We are considering a revision of the incentive plan as of January 6, 1958, which was initiated by the employees' grievance of January 31, 1958. This the employees could do only under the provisions of Paragraph 59. The provisions of Paragraphs 52 to 58 relate solely to incentive plans or revisions instituted by the Company. When an incentive plan is installed by the Company, or an existing incentive plan becomes inappropriate by reason of new or changed conditions, as described in Paragraph 53, and the Company therefore installs a new incentive, and the employees claim that such new incentive does not provide equitable incentive earnings, as judged by the criteria set forth in Paragraph 57, the grievance may be submitted to the Arbitrator. Paragraph 58 provides that until the Arbitrator's decision is rendered, or the new incentive is agreed upon, the incumbents shall receive average hourly earnings not less than those earned in the three months immediately preceding the installation of the new incentive.

It will be readily seen, however, that when the employees process a grievance requesting that a new incentive be installed because of new or changed conditions, Paragraph 59, and not Paragraphs 52 to 58, applies. The significant feature for the purpose of this discussion is that Paragraph 59 does not, like Paragraph 58, call for the maintenance of prior average hourly earnings. It merely provides that:

> "Any new wage incentive plan resulting from such grievance shall be effective as of the date such plan should have been put into effect but in no event more than thirty (30) days prior to the filing of the written grievance."

Consequently, since the grievance before us is one instituted by the employees to require the Company to revise or install a new incentive because of the changed conditions described above, when it is agreed upon or settled through arbitration, the employees will have the protection of retroactivity, but they may not demand the maintenance of prior average hourly earnings in the meantime.

AWARD

1. Incentive File 76-4112-1, Revision 2, became inappropriate as of January 6, 1958;

2. The employees' request that they receive on and after January 6, 1958 the average hourly earnings based on their earnings in the prior three months is denied.

Dated: March 6, 1959

/s/ David L. Cole

David L. Cole
Permanent Arbitrator