INLAND STEEL COMPANY	)	Grievance No. 10-F-32
	)	Docket No. IH 346-337-7/8/58
and	)	Arbitration No. 316
	)	
UNITED STEELWORKERS OF AMERICA Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

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

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
M. S. Riffle, Divisional Supervisor, Labor Relations
G. Haller, General Foreman, Plant #1 Mills

During the week of April 6, 1958, some of the employees in the Plant #1 Mills sequences were working four turns in the week because of a reduced level of operations and some were working five turns. A temporary vacation vacancy occurred in the 36" Rolling and Shearing Sequence, scheduled for five turns in the week. According to a "vacation agreement" there occurred some upgrading in the sequence with the consequence that there were five turns to be filled in the lowest job in the sequence by employees in the Labor Pool. All of the Labor Pool employees had been scheduled for but four turns of work in the week in question. The grievant, who did not have sequential standing, was among those Labor Pool employees who were scheduled for four turns of work. On Wednesday, April 9, 1958, when he was not scheduled to work, the temporary vacancy which he had filled on four other days was filled by another Labor Pool employee with less departmental seniority. This is alleged to have constituted a violation of Article VII (the Preamble, Paragraph 128; Section 5, Paragraphs 144 and 145; and Section 6 (a), Paragraph 146).

The Union argues that the Company knew, in the previous week, that this vacancy would occur; that nevertheless, it scheduled a senior Labor Pool employee for fewer turns than were required to fill the vacancy; that the grievant would have been "most conveniently available in accordance with * * * [his] seniority standing" had he not been scheduled for but four days (Paragraph 146) and that the intent and purpose of the Preamble to Article VII and Section 5 are evaded by the scheduling and assignment practice referred to.

There can be no question but that had the grievant been scheduled for five turns in the week of April 6, 1958, and, more particularly, for April 9, as the senior employee on the turn, his entitlement to fill the vacancy would have been clear. The question then, is, having scheduled Labor Pool employees for four turns (or workdays) in the week, has the grievant been deprived of any rights in violation of the Agreement?

The Agreement does not, in terms, prohibit the scheduling of Labor Pool personnel for four turns or days in the work-week. The Union does not attack the scheduling practice followed, as such, but states that inasmuch as the vacancy needed to be filled for five turns, the senior employee in the Labor Pool should have been scheduled in such a manner as to place him in a posture to enforce his contract entitlement. Stated another way, by its scheduling procedure, the Company has wrongfully dispossessed the grievant of the opportunity temporarily to fill a vacancy guaranteed and secured for him by the Agreement.

The rights of the grievant are derived from Paragraph 146. That Paragraph is expressed in two sentences. The first long sentence deals with a variety of circumstances, all related to the filling of "Temporary vacancies of twenty-one (21) consecutive days or less and those where no definite information of the vacancy has been furnished * * *". The last four lines concern themselves with "temporary vacancies which are known to extend twenty-two (22) consecutive days or more". This second sentence which was the subject of Arbitration No. 298, referred to by the Company at the hearing as shedding light on the problem posed here, is, by its own terms, not applicable.

The first sentence provides that, in the generality of situations, the vacancies described

> "shall be filled by the employee on the turn and within the immediate supervisory group in which such vacancy occurs in accordance with the provisions of this Article * * *."

It then proceeds to except from this rule of "turn-filling" a vacancy where, as in the instant case, it is on the lowest job in the sequence. In such case, it is stated, the vacancy may be filled

> "by the employee in the labor pool group * * * most conveniently available in accordance with their seniority standing. * * *" (Underscoring supplied.)

The grievant was not "most conveniently available", clearly, not having been in the plant because he had not been scheduled for work at the time. It may be conceded that he would have been so, as the Union argues, had he been so scheduled; but to determine that he has been deprived of substantial rights it is necessary to look elsewhere than in Paragraph 146 and to find that

the Company was obliged to have scheduled him for work on April 9 on the turn when the vacancy was required to be filled. My attention has been directed to no provision of the Agreement that commands that this be done. It is not enough for the Union to declare that the vacancy was known to exist for five turns in the week. The grievant's entitlement does not arise by reason of the fact that five days of vacancy will occur, but by reason of a) his senior position among Labor Pool employees and, b) the fact that he was, indeed, "most conveniently available".

It is evident that the Union's claim, basically, is grounded on an alleged improper scheduling arrangement, not a failure by the Company to comply with those provisions of Paragraph 146 which direct the method of filling vacancies in the lowest job in a sequence. Absent a persuasive showing that the Company has violated the scheduling provisions of the Agreement (Article VI) it cannot be held that the Company improperly filled the job in question to the prejudice of the grievant's rights.

In this case the Union argued, as it did in Arbitration No. 298, that a ruling in the Company's favor could result in supervisors, improperly motivated, so scheduling Labor Pool employees on turns and workdays as to deny them the opportunity to fill vacancies as contemplated by Paragraph 146. The weight and importance of this argument is not disregarded here and would be given careful consideration if supported by the facts. Improper practices or unfairly discriminatory acts not prohibited in express terms by the Agreement do not furnish a license for deprivation of rights in the Agreement. The Permanent Arbitrator regards it as within his province to safeguard rights conferred by the Agreement from such assaults, should they occur. This is not a case, however, which calls for such protection. Here, the grievant, (as were all Labor Pool personnel), was scheduled for a four day week. His loss of opportunity to exercise his rights under Paragraph 146 was a normal consequence of scheduling practices which, from all that appears in the record, were not prohibited by the Agreement nor motivated by discrimination.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: April 2, 1959