INLAND STEEL COMPANY	)	
	)	Grievance No. 11-F-37
and	)	Docket No. IH 365-356-5/18/58
	)	Arbitration No. 318
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
A. Garza, Vice-Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
J. Sowa, Grievance Committeeman

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
J. Borbely, Divisional Supervisor, Labor Relations

Two employees in the Plate Mill grieve that a temporary vacancy in Tilt Table Operator occurred which should have been filled by them as the individuals in the sequence with the highest seniority standing. Instead, it is asserted, the Company elected to fill the vacancy with employees "on the turn".

The basic facts are not in dispute. An incumbent of the occupation, G. Gitter, was absent from April 4, 1958 until October 27, 1958. X-rays taken at the Company's Clinic having disclosed a spot on a lobe of his lungs, it was recommended that he seek medical advice and treatment. Gitter took the X-rays to his personal physician who referred him to a Chicago lung specialist. He was hospitalized for four days in Mercy Hospital during which time appropriate tests were made. He then came home and refrained from working until October 27, on the advice of his physician.

On April 10, 1958 the Company "yellow carded" Gitter, i.e., placed a yellow card in the rack indicating that he was not physically in condition to work. It is alleged (and not denied) that the clinic had asked him to notify it as to the length of time that he would be away from his job, but that he did not do so. Indeed, he indicates that he did not possess this information himself. Efforts were made to obtain information from Gitter's

physician as to the duration of his absence but these also were unavailing.

This case involves interpretation of Article VII, Section 6 (Marginal Paragraph 146) the relevant portions of which are as follows:

> "(a) Promotions. Temporary vacancies of twenty-one (21) consecutive days or less and those where no definite information as to the duration of the vacancy has been ffurnished to the department management by the time schedules for the next work week are posted, shall be filled by the employee on the turn and within the immediate supervisory group in which such vacancy occurs in accordance with provisions of this Article, * * *. Temporary vacancies which are known to extend to twenty-two (22) consecutive days or more shall be filled by the employee within the sequence who is entitled to the vacancy under the provisions of this Article."

For the purpose of convenience in this award the material preceding the asterisks will be referred to as the first sentence and the material following, the second sentence.

We shall first dispose summarily with the Union's position that the doctors at the Company's Clinic knew or should have known that Gitter was to receive a gastric test the results of which would not be known for nine to eleven weeks. Accordingly, says the Union, the Company knew that the vacancy caused by his absence would extend 22days or more /second sentence/ and should be filled on the basis of sequence seniority. The Arbitrator does not feel privileged to make such a finding of knowledge in the absence of testimony as to precisely what tests were made (Gitter described them in a very general manner) or what the Clinic's doctors did know or should have known as to the kind of tests he was undergoing.

The principal thrust of the Union's argument is that

> "when the Company knows that a vacancy is going to extend for more than 21 days, even though the actual length of the vacancy is unknown, (that) the Company must fill that vacancy with the oldest man in the sequence who desires said vacancy." (Union Statement, p. 1)

Here, says the Union, when 22 days had elapsed, the circumstances that call the provisions of the second sentence into play are present; and even though there was no certain knowledge of when Gitter would return, the vacancy caused by his absence must be filled with seniority employees rather than by men "on the turn".

The Company rejects this elapsed-time theory of the Union. Its approach, rather, is based on the state of knowledge of the Company as to the future duration of the absence. Thus, it says, referring to the first sentence, that a vacancy known (or believed) to be 21 days or less in duration and a vacancy "where no definite information" as to its duration "has been furnished to the department management by the time schedules for the next week are posted" is to be filled by employees "on the turn". Gitter's absence (and the resulting vacancy) according to the Company was precisely one "where no definite information" as to its duration had been so furnished. Thus, it filled the vacancy with men on the turn.

Turning to the second sentence, it argues that only when, as and if the Company knows that the vacancy will continue to exist for 22 days or more after the day when such knowledge is acquired does the Agreement require that it be filled on the basis of seniority.

There are several anomalies and other results worthy of note in the operation of each of these constructions.

First, consider a situation in which, at its inception, no one knows how long the vacancy will continue. Under the second coordinate clause of the first sentence, there is no dispute that it is to be filled by men "on the turn". Suppose on the tenth day the Company knows that it will continue for twelve days thereafter. The Union says the vacancy must be filled by sequential seniority because it is known on the tenth day that the vacancy will endure for an aggregate of more than 22 days. In other words, it starts counting days from the inception of the vacancy, whatever the applicable rule may have been at that time. The Company, however, says that inasmuch as the vacancy has only ten days to run at the time its duration becomes known, the second sentence does not come into play and it is to be filled by men "on the turn". In other words, the only occasion when a temporary vacancy is to be filled from the seniority lists is when it is known that 22 days or more of absence creating the vacancy will occur in the future.

The same response is given by the Company and the Union in the more extreme case where 21 days of vacancy have occurred and it is known that there will be two more days of absence, resulting in a vacancy for a total of 23 days. According to the Company the vacancy should continue to be filled by the men "on the turn" for the remaining two days; according to the Union the filling of the vacancy by men "on the turn" must stop because the total of days will exceed 22 and for the remaining two days it must be filled from the seniority list.

The Union points out that if the Company's view should be accepted, a temporary vacancy could exist for as much as two years without knowledge as to the day it will terminate and seniority employees will be denied their rights during that period. The Company states that this is possible but not likely inasmuch as even in a prolonged absence due to illness some prognosis as to duration beyond 22 days of absence usually will be given by a physician, in which case resort will be had to the seniority list. It is noteworthy, however, that no such prognosis was actually given in the five and one half months of Gitter's absence.

The Company points out that if the Union's view be accepted, and it becomes known only one or two days before the expiration of the 22 day period that the vacancy will persist for only two or three days more (for example) the necessity of filling it from the seniority lists will not only cause much readjustment, transfer and inconvenience to both the Company and senior employees who will feel obliged to promote from other turns, but that such a result will be contrary to the intentions of the parties and the purpose of the provision.

In this contest of interpretations there are meritorious arguments advanced on behalf of each. On balance, however, the interpretation contended for by the Company appears to have the weight. In the main, there are two reasons for reaching this result.

The position of the Union ignores the effect of the specific language which the parties placed in their Agreement and which dictate the answer in this case. First, it should be noticed that sequential seniority is the rule, pursuant to the second sentence in Paragraph 146 only when a temporary vacancy is "known" to extend 22 days or more. In such a case, says the second sentence, the vacancy shall be filled sequentially. There is nothing in the sentence that says the knowledge of the duration of the vacancy shall be deemed to relate back to the first day when the vacancy occurred. When given a normal reading and considered in relation to that provision in the first sentence referring to the absence of "definite information as to the duration of the vacancy" it becomes clear that the parties, in the second sentence, were dealing with a future situation following the acquisition of knowledge of duration. That is to say they provided that from the time that it is "known" that there were 22 or more additional days of duration of vacancy, the job is to be filled sequentially.

It is said, on behalf of the Union, that the intention of the parties was otherwise. Intentions are important; but the best evidence of intentions is what the parties have placed in the agreement. Unless this language is so ambiguous as to obscure meaning and defy application, the duty of the Permanent Arbitrator is to give it effect.

Here, in the first sentence it was explicitly announced that vacancies were to be filled on the turn

> "where no definite information as to the duration of the vacancy has been furnished".

There is no ambiguity here that justifies resort to testimony as to what one or both parties may have intended. It is evident that the quoted language is directly in point with respect to the facts in this case wherein no definite information as to the duration of Gitter's vacancy was furnished. The circumstances command a decision that the vacancy was properly filled by men on the turn.

It might be footnoted here that the rule laid down in the Agreement and followed in this decision is a rational one. It is clear from a careful reading of the section that the parties were intent on having vacancies of known short duration and vacancies which might terminate abruptly by return of an absent employee filled by men on the turn and that where the vacnacy were known to be of longer duration to fill it from the sequence. Manifestly, considerable confusion in scheduling and assignment would result if the sequential rule would be applied, for example, for the two or three days remaining after it became "known" that the duration of the vacancy, ultimately, would total 22 days or more.

Full consideration has been given to the several instances in which it is alleged the Company did not follow the rule it contends for here. They are not regarded as being controlling in the face of the clear language of the Agreement.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: April 29, 1959