

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA  
Local Union No. 2099

) Grievance No. 146  
) Docket No. IO-MM-440  
) Arbitration No. 328  
)  
)  
)

Appearances:

For the Company:

Henry Thullen, Esq., Attorney  
John W. Hendricks, Supervisor, Industrial Relations

For the Union:

Jack Powell, International Representative

The Union claims that, in violation of Article III, Section 7 of the Agreement the Company had introduced "arbitrary variations" in the working schedule of Gene M. Foster, the grievant, and in consequence thereof, he was denied the opportunity to earn overtime compensation (under Article III, Section 2C) to which he otherwise would have been entitled and which he claims.

Foster normally works in the Production Department as a Lander-Dumpter. When he performs in this classification he is normally scheduled Sunday through Thursday. However, he customarily fills in on Sunday in the Engineering Department as a Hoistman and he is also called upon, with frequency, to fill in other Hoistman vacancies when they occur.

His working schedule during the weeks commencing September 7 and September 14, 1958 was as follows:

S	M	T	W	TH	F	S		S	M	T	W	TH	F	S
7	8	9	10	11	12	13		14	15	16	17	18	19	20
W	W	W	W	W	W			W	W	W	W	W	W	

During the week of September 7, Foster was working as a Hoistman. On Wednesday, September 10, realizing that in the succeeding week Foster would be entitled to overtime pay for Thursday, September 18 as the sixth consecutive day of work in the workweek the foreman, after conferring with his superiors, changed his Lander-Dumpter schedule and scheduled him "H" (or "home") for Tuesday, September 16. This broke his consecutive days of work in the workweek starting Sunday, September 14.

The Union states that this was an arbitrary variation from the schedule in violation of Article III, Section 7 which reads

"Section 7. Work Schedules. The Company will, so far as practicable, arrange regular working schedules so that employees will have two (2) consecutive rest days in each work week, and the Company's determination as to what is practicable shall be final, provided, however, that if the grievance committee at any mine feels that the Company is arbitrarily failing to arrange work schedules so as to comply with the provisions of this Section, it may request a change in such practice and the same shall be subject to the grievance procedure of Article V hereof. Except as otherwise provided in Section 4 of this Article, arbitrary variations from an employee's schedule of workdays shall not be made. Any variations from the working schedule shall be posted or the employee or employees involved advised as far in advance of the time effective as possible."

The Union's position does not have merit under the Agreement. Foster was guaranteed no specific schedule of workdays. Article III, Section 1 states that its provisions "shall not be construed as a guarantee of hours of work per day or per week \* \* \*". Furthermore, the record does not support the thesis that there was an invariable practice of scheduling him as Lander-Dumtper Sunday through Thursday as he claims. An analysis of Company records reveals the following departures from such practice:

<u>"Week Beginning</u>	<u>Days Worked</u>
January 5	Monday through Friday
February 16	Sunday through Wednesday and Friday
March 16	Monday through Saturday
March 31	Monday through Thursday
April 13	Sunday through Wednesday and Saturday
June 1	Monday through Wednesday and Friday and Saturday
June 8	Monday and Wednesday through Friday
June 15	Monday through Thursday and Saturday
August 17	Monday through Thursday and Saturday
September 7	Monday through Thursday and Saturday
* September 14	Monday, Tuesday, and Wednesday through Friday
September 21	Sunday through Tuesday and Friday and Saturday

\* Week referred to in grievance.

It is evident that by reason of the fact that Foster with considerable frequency filled in for Hoistman, there was no regularity in his schedule of work such as he claims.

The Company refers to the fact that Section 7 quoted above requires that regular working schedules be arranged "so far as practicable" and that this provision was designed to and does afford the Company the flexibility of scheduling it requires in its relatively small operation to accommodate to its manpower needs. The Company seems to be on firm ground here, particularly in the light of the last sentence of the section which refers to the posting of variations from the schedule.

The next to the last sentence provides that "arbitrary variations" from a schedule shall not be made and the Union asserts that where the Company varies a schedule in order to avoid overtime compensation, a violation of the section is committed. I do not find this to be so. The Agreement confers no right to overtime work opportunities and the purpose of overtime compensation provisions is as much to penalize an employer for failing to adhere to a straight-time schedule as to compensate employees at premium rates when they are called upon to work beyond regular hours or a regular straight-time workweek. Whatever the agreements applicable to other types of operations may provide, this Agreement does not interdict scheduling an employee off for the purpose of avoiding overtime compensation and no basis for holding that such action is arbitrary has been presented.

The Union has presented another theory of its case. Although its position is not entirely lacking in merit, the considerations require that the question be resolved in favor of the Company. Foster's schedule as Lander-Dumpton was customarily posted each month in the surface dry room along with the schedules of all other production workers. When he was scheduled as Hoistman (as for example, when he was filling in for an absent Hoistman for several days) he was obliged to consult the schedule in the engine room, about 75 feet away from the surface dry room. Apparently, the managerial methods of informing him when he was to be a Hoistman or a Lander-Dumpton were informal and casual. Sometimes he would find his instructions on a slip of paper left in his locker; sometimes he would be told what to do; sometimes he would determine his duties from consulting the posted schedules in one place or the other.

On Wednesday, September 10 the foreman changed the schedule in the surface dry room by erasing the "D" (day-shift) under Tuesday, September 16 and substituting an "H" (home). Foster claims not to have known of this until Sunday or Monday, September 14 or 15 when he was in the surface dry room. The Union claims that this constituted a violation of the last sentence of Section 7. The Company asserts that the variation from the working schedule was posted "as far in advance of the time effective as possible".

Clearly, the steps taken by the foreman to make the change and to notify the grievant thereof fell far short of what good administrative practice in giving notice would seem to require. However, the Union has never before complained of the casual method of communication adopted by the Company in apprising Foster of his frequent schedule changes; and although the method pursued in this case appears to leave much to be desired, it cannot be held that it was insufficient to comply with the Agreement's requirements. In light of the frequent changes in Foster's schedule it seems not unreasonable to have expected him to inspect the schedule in the surface dry room from time to time and especially on this occasion when he knew, that in the subsequent week, he would probably work as Lander-Dumpter. The Company, although perfunctory in its methods, did post his schedule "as far in advance of the time effective as possible". Furthermore, Foster did know of the change in advance of the day it was to become effective.

AWARD

The grievance is denied.

---

Peter Seitz,  
Assistant Permanent Arbitrator

Approved:

---

David L. Cole,  
Permanent Arbitrator

Dated: May 16, 1959