INLAND STEEL COMPANY	)	Grievance No. 148
	)	Docket No. IO-MM-460
and	)	Arbitration No. 329
	)	
UNITED STEELWORKERS OF AMERICA Local Union No. 2099	)	Opinion and Award

Appearances:

For the Company:

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

For the Union:

Jack Powell, International Representative

This grievance requests that the Company pay Charles Dellangelo at overtime rates for work performed on November 7, 1958. For the weeks beginning on October 26 and November 2, 1958, the grievant was scheduled and worked as follows:

S	M	T	W	TH	F	S	S	M	T	W	TH	F	S
26	27	28	29	30	31	1	2	3	4	5	6	7	8
W	W	W	W			W	W	W	W	W	W	W	

The Union points out that November 7 was the "seventh workday of a consecutive 7-day period during which the first five days were worked by the employee, whether or not all of such days fall within the same work week" (Article III, Section 2C). The Company concedes this and rests its refusal to pay at anything more than straight-time rates on the proviso in the cited provision reading

> "* * * provided, however, that no overtime compensation under this provision will be due unless the employee shall notify his foreman of a claim for overtime within a period of one week after such sixth or seventh day is worked; * * *"

The facts are not in dispute. Before leaving the plant on November 6th (the sixth workday in the 7-consecutive day period), and at a time when he did not know whether or not there would be work available for him on November 7 (the seventh workday) the grievant duly notified his foreman that he wanted to be paid at overtime rates. Dellangelo had not been told or instructed to report to work on the next and seventh day. When asked when he had been informed that he would have to work on Friday, the seventh day, Dellangelo stated "They never informed us at all; we just came out the next day; they never told us to stay home" * * * "if they had told us to stay home we would have stayed home. We keep right on going until they tell us to stay home" (p. 22). In other words, the grievant keeps on working, according to his testimony, "Until * * * informed that you have an off-day * * *"(P. 22). According to custom, he appeared at the plant on the seventh day and was told by the same foreman to proceed to work. Dellangelo gave no explicit notification to the foreman that he claimed overtime compensation for his work on that day. The pay period ended on November 15, but Dellangelo was paid about 10 days thereafter on November 24 or 25. He asserts that he did not realize until that time that he had not been compensated at overtime rates for November 7. He received an accounting /"due bill"/ on November 24 or 25 and immediately complained to the foreman requesting the overtime pay. The foreman perfunctorily referred him to the pay clerk. Apparently all notifications and complaints referred to above were orally made, no forms being available for execution or filing. The clerk not having satisfied Dellangelo, a grievance was filed.

On the witness stand, the foreman testified that he knew, on Thursday, November 6 that Dellangelo would be out to work on Friday, the seventh consecutive day, and that the rolling week provision /sixth or seventh workday in a 7-consecutive day period regardless of the workweek/ had been elected by him with respect to the sixth consecutive day. The foreman told the payroll clerk about the claim that had been filed by the grievant for overtime compensation on the sixth day but, apparently, did not regard it as his responsibility to communicate anything with respect to the seventh day, and accordingly, did not do so. He testified that he "expected the clerk to figure out what happened on the seventh day".

The record is less than precise as to the exact words that the grievant is alleged to have employed in notifying the foreman at the end of the sixth consecutive day of work of his overtime claim. The best that can be gathered from the testimony is that the grievant, in effect, notified the foreman that by reason of having worked on Thursday, November 6 he was entitled to such overtime compensation as would enure under the "rolling week" provisions. This, says the Company, was insufficient to constitute the required notification of an overtime claim under Article III, Section 2C because no claim was separately asserted for Friday, November 7.

In Arbitration No. 277 dated September 12, 1958 (Docket No. IH-288-281) the Permanent Arbitrator had occasion to refer to the corresponding provision in the agreement between Inland Steel Company and Local 1010 of the United Steelworkers of America in the following terms:

> "It must be noted that a claim for overtime pay must be made, under paragraph 103, within one week after such sixth or seventh day is worked. This indicates that a degree of uncertainty remains, for the apparent purpose of enabling the employee to determine whether he is better off to ask for such overtime pay or to take the premium pay due under other overtime pay provisions. It should also be noted that an employee is not paid currently day by day. There is the normal lag between days worked and pay day, so that there is an opportunity to note in the payroll records the overtime provision which is being followed where there are alternatives. Certainly, where the employee has the specific right for a period of a week after a given workday to decide whether he desires to take advantage of a particular premium pay provision or not, this indicates that the payroll books are not closed, so to speak, on a day by day basis."

No reason has been advanced at the hearing as to the purpose underlying the necessity of notification of the existence of a claim for overtime rates other than that referred to by the Permanent Arbitrator. It is understandable that where an employee might resort to one of several provisions under which overtime rates are payable, the Company should be entitled to timely notification of the single provision under which the employee elects to be paid. The proviso under consideration, however, does not in terms require a separate notification of a claim by an employee for the sixth and then for the seventh day in the 7-consecutive day period. Presumably, inasmuch as the employee has a period of one week in which he might give notification, if he failed to do so on the completion of work on the sixth workday and on the seventh workday, within the full week's period stipulated he might still give one undifferentiated notification of claim applicable to work on both days.

If he might, after the fact, give such a single notice of claim, the question arises whether he might not similarly give such a single notice applicable to the sixth and seventh day after the end of the sixth workday and before the seventh workday. It would seem that whether such notification satisfies the requirement of the Agreement depends on the special facts and circumstances presented. The inquiry would be whether, under the circumstances in this case the Company was sufficiently informed of the election, between the various overtime provisions, made by the grievant and whether he is bound by that election.

In the instant case there would have been no problem at all if the foreman had not taken such a limited and restricted view of his responsibilities. As the representative of the Company dealing with the grievant he was amply informed that, with respect to the sixth day the grievant was claiming overtime compensation under the "rolling work week" provision, so-called. He also knew, at the termination of the sixth workday that the grievant, if he appeared for work on the next day, as was customary, would be assigned to work. If the foreman's knowledge is to be attributed to the Company, which seems reasonable, the Company knew, at the end of the sixth day, under what overtime compensation provision the grievant had elected to proceed. Indeed, having made that election plain, the Company would have had a sound basis for objecting should he have attempted to resort to any other provision.

In such a case, the foreman seems to have considered that the knowledge he had of the grievant's election among the overtime provisions was personal to him and private and he was under a duty to inform the clerk that the grievant, should he work, as expected, on the seventh day was also entitled to overtime compensation for that day under the "rolling workweek" provision only if the grievant specifically notified him of a seventh day claim.

This position is not supported by any language in the Agreement and carries parochialism and literalness as to the foreman's responsibilities to the extreme. What the foreman was notified of and knew the Company also was notified of and knew. The validity of the grievant's claim cannot be made to rest upon the extent to which a foreman believes he is obliged to divulge his knowledge to another Company employee. Under the circumstances of this case the employee "notified his foreman of a claim for overtime" within the meaning of Article III, Section 2C and fulfilled the requirements of the Agreement.

Inasmuch as this decision is based on the special facts presented in the record of this case, it should not be read as a broadside holding that notification of the day with respect to which overtime compensation is claimed is no longer required, generally. In other fact situations, an employee who fails to notify, as required, may be doing so at his peril.

The Union also presented a claim for overtime compensation for Friday, November 7, on the theory that it was the sixth workday in the payroll workweek. This claim was asserted under the provision of Paragraph 102. Inasmuch as the grievant had already claimed overtime compensation for Thursday, November 6 under Paragraph 103 (the "rolling workweek provision), this theory is untenable under the "non-duplicating" provision of Paragraph 116.

AWARD

The grievance is granted.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: May 16, 1959