INLAND STEEL COMPANY)
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and)
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UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 12-F-112
Docket No. IH-352-343-6/21/58
Arbitration No. 336

Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
J. L. Federoff, Divisional Supervisor, Labor Relations
J. J. Mulligan, Assistant Superintendent, Galvanizing Department

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee

Three employees in the Galvanizing Department (K. Branum, J. Hawkins and C. Crawford) complain that during the week of March 9, 1958, in violation of the agreement (Article VI, Section 3, Paragraph 118), having been scheduled to work on other lines in the Department were actually assigned to the #1 galvanizing line which was down for dressing and that they were compensated only at base rate. They were, it is complained, denied the "average earnings" by which is meant the incentive earnings that were being paid during the week on the other galvanizing lines to which they had been scheduled.

In brief, the Union's position is this:

1. That the employees were scheduled, but actually were assigned and worked as appears in the following table:

Employee	Scheduled	Worked
Branum	Welder Feeder #3 line 4-12 turn	Welder Feeder #1 line 4-12 turn
Hawkins	Welder Feeder #3 line 4-12 turn	Welder Feeder #1 line 4-12 turn
Crawford	Welder Feeder #2 line 4-12 turn	Welder Feeder #1 line 4-12 turn

Crawford's claim relates to March 10 and 11; Hawkins' to March 12; Branum's to March 11, 1958.

2. An incentive plan applicable to operating turns on each of the three lines does not apply during dressing periods, when base rates are paid. The #1 line was down for dressing on the days when the grievants were assigned to work thereon. The occupation of Welder-Feeder is compensated at two "rates" (as that term appears in Paragraph 118): a base rate and an incentive rate.

3. Accordingly, the Company transgressed Article VI, Section 3, Paragraph 118 (second sentence) which reads

> "Section 3. An employee directed by the Company to take a job in an occupation paying a higher rate or rates than the rate of the occupation for which he was scheduled or notified to report shall be paid the rate or rates of the occupation assigned for the hours so worked. Where an employee scheduled or notified to report for an occupation is directed by the Company either at the start or during a turn to take for all or a part of that turn a job in an occupation paying less than the rate or rates of the occupation upon which he was scheduled or notified to report, he shall receive the rate or rates of the occupation on which he was scheduled or notified to report while performing such lower rated work, except where such employee would have otherwise been demoted or laid off from the job for which he was scheduled or notified to report, in which cases the employee shall receive the rate or rates of the occupation assigned, subject, however, to the provisions of Sections 5 AND 6 of this Article VI."

4. The Company should have compensated the grievants at the higher "rates" of the occupation for which they were scheduled. Specifically, the Union asks for "the average earnings" for the turn for the work for which grievants were scheduled and for a direction to the Company to continue "the past practice of having regular crews do dressing on their respective lines."

Although conceding that the schedule posted on the previous Thursday directed these employees to lines other than the #1 line destined for dressing during the week in question, the Company relies on special circumstances which, it claims, take the situation out of the operation of Paragraph 118. First it claims that starting February 2, 1958 it began the difficult and complicated task of accomodating its seniority lists to the holding in Artbitration No. 167 et al dealing with extended operations. This required a reduction in the number of crews. Second, it claims that it posted and handed to the Union, about this time, a Master Schedule, and that employees were advised that since the final crew alignments were not settled the schedule was only tentative and changes would be made during a transition period. Third, although the Company continued to post weekly schedules according to the pattern in the Master Schedule, in fact, in the following weeks, reassignments were made according to a rather regular pattern

and employees worked on lines other than those indicated in both the Master Schedule and the Weekly Schedule. The Company claims that this pattern of realignment and reassignments was such that

> "The employees were well aware, prior to the week beginning March 9, 1958 as to the occupations and lines to which they were assigned ... "

The Company also alleged that the grievants were notified before going to work by their turn foremen on the days in question as to the line they would be required to work. 1/

The exhibits presented by the Company show that although Crawford was usually scheduled for the #2 line he frequently worked the #1 line. Branum was customarily scheduled for the #3 line but was also scheduled on occasion for the #1 line. A similar situation obtains with respect to Hawkins who was scheduled for the three lines on different days, but actually worked the #1, #2 or #3 line regardless of the scheduling.

This data has been examined with care in order to determine whether it bears out the contention of the Company that it "indicates conclusively" that the grievants "were themselves well aware in advance of the work week beginning March 9, 1958 that they would be scheduled during the turns cited in the grievance on the #1 line." If such were the fact it does not appear from the exhibits. Exhibit A (the Master schedule) shows the grievants as scheduled for Welder Feeder on #1 line for various days, but sheds no light whatsoever on the pattern of variation or the departures therefrom which the grievants might expect. Exhibit B shows how they were actually assigned (regardless of schedule) but the Arbitrator is unable to perceive here any such regular pattern which would enable him to find that, on the basis of work assignment, the grievants must have known that they were going to work on #1 line on the days in question. Likewise, Exhibit B-1 shows both the Master Schedule and the actual assignments for the weeks beginning March 2 and March 9. Crawford was scheduled for these weeks on #2 line but worked only #1 line. Branum was scheduled for #3 line and #1 line but worked #2 line and #1 line regardless of how he was scheduled. Hawkins was scheduled for #1, #2 and #3 lines and in this two week period worked #1 and #3 lines (and #2 line in another occupational capacity).

It may be, as the Company insists, that the grievants were told and, by virtue of a pattern of experience not apparent from inspection of the

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1/ When the Arbitrator inquired why, if the Company knew the pattern of work assignments varying from the Master Schedule (a knowledge it attributes to the grievants), it did not post weekly schedules in accordance with that pattern, the answer of the Company witness was that whereas such a pattern was known with respect to this occupation (Welder-Feeder) there was no similar pattern with respect to other occupations lower in the sequence. Accordingly, it would seem the staff of the entire sequence was scheduled in accordance with a Master Schedule that had no reality insofar as this occupation is concerned.

exhibits, they know, that they were going to work the #1 line on the days and turns in question. However, the absence of testimony by the turn foreman to balance the explicit denials of the grievant and, further, the failure of the Arbitrator to discern a pattern in the assignment experience require him to conclude that, so far as this record is concerned, the fact contended for by the Company has not been established.

In view of the above, it is found that the grievants were "scheduled or notified to report" for lines in the galvanizing department other than line #1 in the occupation of Welder-Feeder.

We now come to the central question of contract interpretation in this case. Having been scheduled or notified to report as held above it must be inquired if the grievants were "directed by the Company" to take

> "a job in an occupation paying less than the rate or rates of the occupation upon which he was scheduled or notified to report ... "

in which case he is to receive

> "the rate or rates of the occupation on which he was scheduled to report while performing such lower rated work."

In reading and seeking to understand the meaning and effect of Paragraph 118, one is immediately confronted by the variable use therein of the terms "occupation," "job in an occupation," and "lower rated work." This was noted by the Permanent Arbitrator in Arbitration No. 321, as well as the reference to "rate or rates of the occupation," which, he stated, suggested that the parties "must have had in mind the incentive rates as well" as the base rates.

Article VI, Section 3 is plainly a provision designed to protect the right of an employee to receive not less than the rate of pay for which,for want of a better expression, it may be said he was scheduled. In the Agreement (Paragraph 118), as noted, mention is made of "occupation," "job in an occupation," "lower rated work," and "rate or rates of the occupation upon which he was scheduled or notified to report."

While Paragraph 91 (Article VI, Section 1 D) requires the Company to schedule only the employees' workdays not later than Thursday of the preceding week, the practice has developed of scheduling also the job within the Welder Feeder occupation which each employee will fill. There is a qualifying phrase in Paragraph 91 "in accordance with prevailing practices," and on all the evidence in this case, the designation of the job in terms of the line on which each individual employee will work seems to constitute such a prevailing practice.

It is recognized that assignment to a specified line may in itself result in the payment of only the base rate if that line, in the period in question, is scheduled to be off incentive. This is one of the "rate or rates" applicable at varying times, but the fact still remains that when one line is on incentive and another is on base rates the transfer to the latter of an

employee scheduled to work on the former represents, within the evident intent of Paragraph 118, a direction to the employee to take a job in an occupation paying less than that for which he was scheduled, and, moreover, when he takes this job he is performing lower rated work in terms of compensation. If work on his scheduled job were unavailable, or if the employee faced a layoff, the situation might be otherwise, but these facts were not present in this case.

A certain amount of interpretation is entailed in arriving at this conclusion but this follows from the manner in which the parties have interchanged the several terms mentioned above. This has created a degree of ambiguity which must be cleared up by searching out the intent and purpose of this contract provision. This process leads to the conclusion stated.

It should be observed that it is understood that the Company claims that this if the first time this question has been raised by these grievants although they had previously been scheduled for a job in an occupation and compensated at the lower rate of another job in the occupation to which they had been directed. The record, however, does not disclose such a course of practice or usage or previous recognition by the employees or the Union of the questions raised here as to justify invoking the equitable principle of estoppel. Certainly, if their rate of pay was not adversely affected thereby, they had no reason to object.

AWARD

The grievance is granted.

Dated: February 10, 1961

David L. Cole
Permanent Arbitrator