IN THE MATTER OF ARBITRATION

between

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA,
Local Union 1010

ARBITRATION AWARD No. 341

Appeal No. 8.
Grievance No. 10-F-46

PETER M. KELLIHER,
Arbitrator

APPEARANCES: FOR THE COMPANY:

W. A. DILLON, Assistant Superintendent, Labor Relations Department
R. J. STANTON, Assistant Superintendent, Labor Relations Department
H. S. ONODA, Labor Relations Representative
G. R. HALLER, General Foreman, #1 Bloomer, Plant #1 Mills
M. S. RIFFLE, Divisional Supervisor, Labor Relations Department
J. W. RYAN, Safety Engineer, Safety Department

FOR THE UNION:

CECIL CLIFTON, International Staff Representative
F. GARDNER, Chairman, Grievance Committee
J. WOLANIN, Secretary, Grievance Committee
W. BENNETT, Grievance Committeeman
D. VELASQUEZ, Steward
C. BROWN, Safety Committeeman
W. WARNER, Witness
H. EZELL, Aggrieved

THE ISSUE

The issue is the disposition of Grievance No. 10-F-46 dated July 17, 1958, reading as follows:

> "The aggrieved, H. Ezell, #1758, contends the Company did not have just cause to deny him promotions to the Crane Operator's occupation, effective July 11, 1958, in view of all the circumstances.
>
> Relief Sought: Aggrieved be permitted to promote to the Crane Operator's job and be paid all money lost due to the Company scheduling younger employees instead of the aggrieved."

DISCUSSION AND DECISION

The evidence in this case is that about 9:30 P.M. on July 6, 1958, the Grievant was operating No. 10 crane when the chain became caught in a hole in the floor of the gondola. The Company charges that in attempting to free the chain, Mr. Ezell, the Grievant, bridged the crane over with such force that when the chain was freed, it flew up and hit the cab, breaking the window and causing injury to the Grievant's forearm.

The Company issued a "warning" advising the Grievant that he violated the safety policy of the Company and that further violation would render him liable to discipline. (Union Exhibit 1) The Company, in addition thereto, issued a "DENIAL OF PROMOTION" dated the same date. In this letter of denial issued by the Superintendent, a series of prior offenses were cited and the Superintendent concluded: "In view of the above quoted incidents,

we herewith advise you that you will be denied further promotion to a crane operator's job, effective July 11, 1958". (Emphasis added) There can be no question that in this letter of denial, the Company based its decision upon the "above quoted incidents" and not simply upon the incident that took place on July 6, 1958. All of the other cited incidents took place in a period one year prior to this incident and to the letter of denial of promotion.

Article VII, Section 2, states:

> "These letters are recorded on the personnel cards. In all cases where one (1) year elapses after a violation requiring written notice, such violation will not influence the employee's record.
>
> These records of the employee's individual performance have much influence on the "Ability to perform the work" clause in Section 1 of this Article, but in no case will the Company contend inability to perform the work when the procedure as outlined in this Section has not been strictly complied with. Should any dispute arise over the accuracy of the personnel record, it shall be disposed of through the normal grievance procedure."

There can be no question that violations that were barred by this contractual "statute of limitations" did "influence the employee's record" in that the Company cited and relied upon the "recorded incidents" as a basis for the denial of promotion. The record as stated in the contract does have "much influence" on the determination of the ability factor. The above quoted "statute of limitations", however, clearly states that violations where one year has elapsed "will not influence the employee's record".

In Arbitration Award No. 280, this above quoted language was cited by the Union. The Arbitrator, in construing this specific provision, found that the suspension letter mailed to the Grievant contained references to other incidents "which had occurred much more than a year before". He found that "But for the Grievant's record of prior transgressions it is doubtful whether his disciplining would have gone to the extent of discharge". He further stated:

> "This introduces an additional element into the case. Article VII, Section 2, as indicated above, includes a form of contractual statute of limitations on the influence of violations calling for written recording in an employee's personnal record. The period of limitation is one year. At most, after a year expires with no repetition of similar or related violations, the early violations may serve only as a backdrop against which the current violation may be judged. The old violation may not in itself serve as a basis for disciplinary action at the present time."

Arbitrator Cole clearly stated that "at most" after the period of limitation has expired, the "earlier violation may serve only as a backdrop against which the current violation may be judged". The Company, in the present case, as in the matter before Arbitrator Cole, specifically set forth the old violations as a basis for the action taken. Arbitrator Cole states further:

> "In arriving at its decision to discharge grievant Management frankly relied heavily on his past record. It is dubious in view of the one-year limitation stipulated in Article VII, and of the time gaps between recorded offenses since 1953, whether Management had the right to accord such weight to this record."

In the particular case presently before this Arbitrator, no statement was made which would indicate that the Company would have taken this action to deny promotion solely on the basis of the July 6, 1958 incident. It is entirely clear from the Superintendent's letter of denial that it was based on all of the above quoted incidents.

The Grievant's testimony in this case shows that he was aware of the fact that there were holes in the bottom of the car during the time that he placed the first four loads in the gondola. He certainly should have been aware of the possibility of the chain catching in the hole when he was placing the fifth load in starting a new row on top of the first four loads. The General Foreman's testimony is that the chain would not have flipped up and broken the window of the cab if the Grievant was in fact operating it at the first point.

Based upon all of the evidence in this record, the Warning Notice of July 11, 1958, shall stand. The denial of promotion shall have no force and effect because it is based upon recorded incidents beyond the statute of limitations.

AWARD

The Grievant shall be given the option of demoting to the Labor Pool so that he may in the future accept temporary assignments to the Crane Operator's position. He shall be compensated for any earnings lost from and after July 11, 1958.

(signed) Peter M. Kelliher
PETER M. KELLIHER

Dated at Chicago, Illinois
This 29th day of June, 1960.