INLAND STEEL COMPANY
(Indiana Harbor Works)
- and -
UNITED STEELWORKERS OF AMERICA,
AFL-CIO, Local 1010

APPLICATION OF AWARD

Award Nos. 346, 347, 348

On August 19, 1960, this Arbitrator entered the following award:

> "1. Wage Incentive Plans, Files No. 75-4112-1, Rev. 2, No. 75-0506-1, Rev. 3 and No. 75-2017-1, Rev. 1, shall be increased by four (4) per cent." (Co. X A)

This Award must be understood in the context of the opinion that preceded it. In this opinion the Arbitrator stated:

> "Arbitrator Lehoczky, in Arbitration No. 65, made essentially the same finding and concluded that in that case, as in this case, there is a 'degree of tightness' in the rates. The Arbitrator here must conclude that some liberalization in the incentive plans is necessary in order to meet the equitable criteria described in Article V.
>
> Based upon all the evidence, it must be found that a liberalization to the extent of four (4) per cent in the plans would meet the criteria." (Co. X A)

During the hearings held in March of 1960, in referring to Arbitration Award No. 65, the Company Counsel did state:

> "Well, what he is talking about is three per cent increase in the incentive portion, not in the total earnings under the incentive base portion, but in effect in the credit units." (Tr. 102)

This Arbitrator did understand from the evidence and the arguments of the Parties that Arbitrator Lehoczky's award quoted above referred to a liberalization of only the "incentive portion" and not of the base or the total earnings. (Orig. Tr. 74 and 76). The entire award of Arbitrator Lehoczky appears as follows:

> "We find that the Company proposed Wage Incentive Plan although correct as to principle, shows a degree of tightness when examined in the light of the terms 'and the previous job requirements' as these terms apply in

Article V, Section 5, Procedure 4. In order to correct this situation we find that the plan must be liberalized by increasing its yield by 3%." (Co. X B)

This Arbitrator paraphrased the above quoted language of Arbitrator Lehoczky in rendering his award. The liberalization of the incentive portion of the plan is accomplished by increasing its yield. In Award No. 81, Arbitrator Lehoczky stated that: "The 3 per cent liberalization is to be applied to the variable earnings." (Co. X A) It is true that in the original hearing considerable evidence was introduced as to total hourly earnings. This, however, was only part of the evidence and the Company did present evidence relating to work analysis and procedures, change studies, equipment studies, time studies, etc. The Arbitrator did find in effect that the expected production level established by the Company was too high and that a downward revision was warranted. Under the standard procedures, such a downward revision would result in a liberalization only of the incentive rates applied to production to determine the variable earnings. This does not entail a revision in the standard rates which are applied on a time basis for all hours worked. The incentive base remains common. (Tr. 12) The Arbitrator did not intend any change in the incentive base, but only in the variable portion of the incentive plans.

The only issue as clearly stated in the Award involved the 4-furnace rate and the 2 and 3-furnace rates were not an issue. Clearly the earnings under the 2 and 3- furnace rates could not properly be increased. The Arbitrator simply lacked jurisdiction with reference to such rates.

Understood in the context of the opinion and the total history particularly relating to Awards 65 and 81, the award clearly contemplated only an increase in the yield. This Arbitrator did not intend the percentage to be applicable to the non-variable earnings.

AWARD

The Company's application of the Award is proper.

Peter M. Kelliher

Dated at Chicago, Illinois

this 19 day of July 1961.

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The issue in this case relates to the computation of retroactive pay in connection with the plans covering the Mill Crews. The plans contemplate that incentive earnings shall be based on the standard operating hours credited to the Mill Crew "during each operating turn". The Union contends that under Article V, Section 3(b), that "the average hourly earnings" as defined in Section 5 constitute an "existing fixed occupational hourly rate". This Arbitrator must find from the history and the analysis of the War Labor Board Panel that the term "existing fixed occupational hourly rate" could not refer to any rate that contained within it as a component incentive earnings. There can be no question that average hourly earnings as set forth in Article V, Section 5, does contemplate earnings from production. The Steel Arbitration decisions cited do indicate that the term "fixed occupational hourly rate" has been defined as a rate applying to hourly rated work and not to incentive work. The Steel Workers Arbitration Newsletter of June 15, 1961, in the matter of Jones & Laughlin Steel Corp., Pittsburgh Works, Gabriel N. Alexander, Chairman, states:

> "Standard Hourly Wage Rates do not constitute base rates for incentive plans which were in existence prior to the 1947 Jones & Laughlin Contract. The base rate under such a plan, is the occupational hourly rate for the respective occupation which was in effect prior to April 28, 1947, plus such amounts as are properly "factored into" that base prior to the effective date of the current Agreement."

There can be no question that the concept of average hourly earnings as set forth in Article V, Section 5, is intended to be merely temporary and not an "existing fixed" hourly rate. If the Parties had intended average hourly earnings to be within the definition of Article V, Section 3(b), they would have found clear and precise language to express such an intention. It is clear that any type of production rate based upon piecework earnings is in "contradistinction to occupational rates". (1 WLR 384). Section 3(b) as thus defined is simply not applicable since the jobs here involved are on a standard hourly base rate. The Company, therefore, has complied

with Article V, Section 3 in its application of the retroactive payments.

Article V, Section 5 was interpreted by Arbitrator Pearce Davis in Arbitration No. 58. He was concerned with the same type of "turn plan" that is here involved. He did direct that the guarantee should be applied currently during the pendency of the dispute on a "pay period" basis. Arbitrator Davis quoted the Union as maintaining that under Article V, Section 5, the Parties intended to guarantee that "past average incentive earnings would be paid to workers operating under new incentives on and for each payroll period". It is noted that the Union contended that the purpose of the average hourly earnings guarantee which is referred to as a "temporary guaranteed minimum" was to maintain the employees' standard of living by giving them the same pay as they received during a prior period. (Co. X Q).

The weight of the evidence is that the average earnings guarantee of Article V, Section 5 was here also applied in accordance with the past practice existing during 1951-53 in connection with Award Nos. 65 and 68. These awards likewise involved "turn plans". The evidence does also show that the Company applied Article V, Section 5 in the same manner as contemplated by the prior awards during the pendency of the present dispute. Under Article V, Section 5, the average hourly earnings based upon the earnings received during the prior three (3) month period are to be applied only "until an Arbitrator's decision". There simply would be no logical basis for a different method of payment in the period prior to an Arbitrator's decision and subsequent to an Arbitrator's decision. This Arbitrator is unable to find any contractual basis for a different construction of Section 3(b) on a current application during a dispute as compared to a retroactive application of an adjustment following the Arbitrator's award.

The Company conceded at the hearing that it incorrectly averaged the adjusted earnings of the three crews which resulted in some employees in some pay periods receiving less than they would have received, and other employees receiving more and in doing so that it had not fully complied with the award. The Company indicated its willingness to make recomputations and adjustments on an individual basis.

AWARD

Subject to the Company's making the required recomputations and adjustments resulting from their incorrectly averaging the adjusted earnings of the three crews, the Company's retroactive payments are proper.

Peter M. Kelliher

Dated at Chicago, Illinois
this 19 day of July 1961.