

INLAND STEEL COMPANY

-and-

UNITED STEEL WORKERS  
OF AMERICA  
Local Union No. 1010

ARBITRATION AWARD No. 352

Appeal No. 38  
Grievance No. 11-F-42

PETER M. KELLIHER  
Arbitrator

APPEARANCES:

FOR THE COMPANY:

MR. JOSEPH BORBELY, Divisional Supervisor, Labor  
Relations Department  
MR. WILLIAM A. DILLON, Assistant Superintendent,  
Labor Relations Department  
MR. ED NEMETH, Acting Assistant Superintendent, 100"  
Plate Mill Department  
MR. H. S. ONODA, Labor Relations Representative,  
Labor Relations Department

FOR THE UNION:

MR. CECIL CLIFTON, International Staff Representative  
MR. JOSEPH WOLANIN, Secretary, Grievance Committee  
MR. R. LEGLER, Aggrieved  
MR. J. SOWA, Griver

## THE ISSUE

The grievance reads:

"On the date of September 15, 1958, a permanent vacancy occurred in the Mill Sequence on the occupation of 2nd Hooker. After the seven (7) day posting, the Company promoted E. Krebs, #4183, to fill this permanent vacancy.

"R. Legler, #4146, contends he should have been given the opportunity to fill this permanent vacancy because of greater departmental seniority."

Relief sought:

"That R. Legler, #4146, be given the opportunity to fill this vacancy of 2nd Hooker and be paid all money due for all turns denied to him because of Company's failure to promote him to this vacancy."

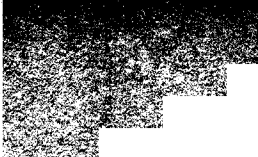
## DISCUSSION AND DECISION

In this case, it is agreed that the Grievant had greater "length of continuous service". No issue was raised as to the factor of "physical fitness". The parties are in dispute, however, as to the factor of "ability to perform the work".

It is the Company's essential position that the junior employee, Mr. Krebs, had greater "ability to perform the work" because he filled temporary vacancies on the Second Hooker and on the First Hooker jobs. In its brief on p. 8, the Company states:

"Certainly there can be no more valid and reliable measure of a man's ability than his performance on the job on which his ability is being judged."

The ability factor, however, does not contemplate solely an



experience test. The Grievant held the second highest job in the Hot Bed Sequence during the time that the junior employee was in the labor pool, temporarily promoting up to the Second Hooker job. The parties are in agreement that the contract permits any employee in the department to apply for this permanent vacancy. There is no limitation that the applicant must be in the Mill sequence.

In Award No. 46, the Arbitrator there stated that he did not "give the same weight as does the Company to the matter of the number of turns worked by each man" on the job. This Arbitrator must agree that the number of turns worked or experience on the particular job is not necessarily controlling.

The factual situation under Arbitration Award No. 46 and this Award are not entirely similar. In the earlier Award the Company made a definite showing that, while the junior employee had received no reprimands, the senior employee had received reprimands relating to his work performance. The Arbitrator indicated that this consideration would "justify Management's decision". The evidence in the particular case here considered shows that the junior employee received no reprimands "during his training period". There is no evidence, however, as to the Grievant's work record on the jobs that he has held.

This Arbitrator must concur in the statement made by Arbitrator Cornsweet that "the Agreement indicates that the

approach to this type of grievance must be on an individual rather than on a general or blanket basis". The evidence in each particular case must be considered. In the case before Arbitrator Cornsweet, the permanent vacancy was in the highest job in the sequence. The skill required there in the Assistant Roller job is shown by the fact that the previous occupant of the job had been promoted to the non-bargaining unit job of Assistant Superintendent. Arbitrator Cornsweet found that the evidence shows a "real differential in abilities". He summarized his Award as follows:

"In concluding this opinion the umpire wishes to repeat that length of continuous service is a factor and must be taken into consideration in any promotion even when factors (b) and (c) are relatively equal. It is not the governing factor in such cases and can be outweighed by a substantial difference in the other factors, but it is, under this contract, a factor that cannot be ignored."

This Arbitrator must conclude that the Company has failed to show in the matter here considered a "substantial difference" in the factor of "ability to perform the work". The earlier Award clearly shows that as a matter of past practice, the Company admittedly has not applied the factor of "ability" in making promotions in a large percentage of the cases, "since in labor and low rated jobs the factor of relative ability is of no great consequence". (Emphasis supplied) The evidence here is that this job is in a job class below the average of the job classes in this plant. An understanding of the job

duties, both from a view of the operation and the job description, shows that it principally requires speed, coordination, and physical ability. The work is largely of an "assisting" nature. There is no evidence in this record that would indicate that the Grievant, who had attained the second to the highest job in the Hot Bed Sequence, lacked ability to do this work, where the job was being frequently filled by the junior employee when he was in the labor pool. There has been no contractual change made since Award No. 46. The grievances referred to by the Company must be judged on the particular evidence in those cases. The record would indicate that in one case the Grievant was demoted because he failed to demonstrate his ability to perform the work while assigned to the particular job. In the other cited grievance, the employee was not promoted because he lacked ability to adequately understand English and to write it.

AWARD

The grievance is sustained.

(signed) Peter M. Kelliher  
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PETER M. KELLIHER

Dated at Chicago, Illinois  
this 28th day of August, 1960.