INLAND STEEL COMPANY

-and-

UNITED STEEL WORKERS OF AMERICA
Local Union 1010

ARBITRATION AWARD No. 359

Appeal No. 41
Grievance No. 21-F-30

PETER M. KELLIHER
Arbitrator

APPEARANCES:

FOR THE COMPANY:

MR. R. J. STANTON, Assistant Superintendent, Labor Relations Department
MR. W. E. DILLON, Assistant Superintendent, Labor Relations Department
MR. V. W. FIEGLE, Foreman, 44" Hot Strip Metallurgical Department

FOR THE UNION:

MR. CECIL CLIFTON, International Staff Representative
MR. J. WISEMAN, Grievance Committeeman
MR. D. LUTES, JR., Aggrieved
MR. G. GERMEK, Witness
MR. J. WOLANIN, Acting Secretary, Grievance Committee

THE ISSUE

The grievance reads:

"The aggrieved, D. Lutes, Jr., #24443, Tester in the 44" Lab., contends that although he didn't think he had a waiver placed on him for the job of Mill Observer in the 44" Mill he announced, in writing, his intention to fill future vacancies after being told by the foreman that a waiver was placed against him.

"The aggrieved asked, in writing, that he be allowed to work the Mill Observer job in the 44" Mill on the 4 to 12 turn of October 11, 1958, for which he had originally been scheduled to work.

"The Company violated the contract by scheduling A. Govorchin, #24487, a Tester and a younger man than the aggrieved to work as Mill Observer on the 4 to 12 turn October 11, 1958, instead of scheduling the aggrieved who was rightfully entitled to work this turn."

Relief sought:

"Aggrieved requests that he be given his correct sequential standing in the 44" Mill Lab. sequence and that he be paid for loss of eight (8) hours of work due him."

DISCUSSION AND DECISION

The Grievant, Don Lutes, a Tester, refused to accept a temporary promotion as a Mill Observer on October 8, 1958. He did not deny that his stated reason was "that the Company should call in a regular Mill Observer for this turn". This was not a "good and valid reason" for entering a waiver under the last paragraph of Article VII, Section 6(b).

The Company was not required to accede to the Grievant's request because Article VI, Section 8 provides that when "a

scheduled employee is absent" then the management "shall fill such a vacancy in the schedule in accordance with Article VII". This means that the Company must promote up on the basis of sequential seniority. Under the terms of Article VI, Section 8, it is only when the "schedule cannot be so filled" that the Company should call out "a replacement or hold over another employee". The employee is presumed to know the terms of the Contract. Any alleged past practice cannot be given the effect of modifying the Contract and what would here be an infringement of the seniority rights of junior employees to be upgraded under Article VII.

The Grievant previously accepted a temporary promotion on at least one occasion where the Company did not double over or call out a replacement for an absent employee. The employee therefore knew or should have known that the Foreman's request was entirely proper. At the Third Step hearing, the Union agreed that Mr. Lutes' "action constituted a waiver of promotion and that if the Company had not attempted to promote on the turn, a violation of the Collective Bargaining Agreement would have resulted."

Although the Foreman did not here attempt to discipline the Grievant for his refusal to promote up and Award 39 concerned a disciplinary matter - the Arbitrator there did hold that "the

right to refuse a temporary promotion must, therefore, be regarded as a qualified one". The Arbitrator expressly ruled that a refusal based upon an attempt to have the work done at overtime rates was invalid.

This Grievant volunteered the information at the hearing that he had refused to give the Foreman a reason for his attempted waiver on September 25, 1958. He at no time refuted the Company's assertion that his refusal on October 8, 1958 was an attempt to have the work performed at overtime rates.

The Grievant's record just prior to this grievance shows that his entry and withdrawals of waivers were not based upon his attitude towards the particular job in itself but that he either refused to give a reason or offered an invalid or improper reason. The Arbitrator must conclude that he did enter and withdraw waivers "indescriminately".

The employee here failed to "step up to fill a vacancy" and he did this knowingly - and must in addition be found from the evidence to have signified his intention to waive this promotion. In his letter dated October 10, 1958, he made no claim that he misunderstood and actually did not waive the promotion on October 8. Clearly, as a matter of sound procedure, the Company need not accept a withdrawal of promotion from an employee unless "it is subject to his having a good and valid reason for such with-

drawal with regard to the reason originally given for his waiver". (Emphasis supplied)

Waivers, however, are not intended under all circumstances to be irrevocable and binding on an employee in perpetuity. Based upon the condition that the Grievant will not again urge as a reason for his refusal any excuse that will result in a contractual violation by the Company or an increase in its overtime costs, the employee's withdrawal should be honored effective within ten (10) days after the date of this Award.

AWARD

No compensation is due the Grievant. His waiver, however, shall be honored within ten (10) days after the date of this Award.

(signed) Peter M. Kelliher
PETER M. KELLIHER

Dated at Chicago, Illinois
this 19th day of August, 1960