

INLAND STEEL COMPANY

-and-

UNITED STEEL WORKERS
OF AMERICA
Local Union 1010

ARBITRATION AWARD No. 367

Appeal No. 60
Grievance No. 20-F-46

PETER M. KELLIHER
Arbitrator

APPEARANCES:

FOR THE COMPANY:

MR. WILLIAM A. DILLON, Assistant Superintendent, Labor
Relations Department
MR. R. J. STANTON, Assistant Superintendent, Labor
Relations Department
MR. H. S. ONODA, Labor Relations Representative, Labor
Relations Department
MR. J. J. MATUSEK, Assistant Superintendent, Mechanical
MR. JOHN NEDEFF, JR., General Foreman, Mechanical

FOR THE UNION:

MR. CECIL CLIFTON, International Representative
MR. JOSEPH WOLANIN, Secretary, Grievance Committee
MR. JAMES BALANOFF, Grievance Committeeman
MR. MELVIN SALMI, Aggrieved.

THE ISSUE

The grievance reads:

"Melvin I. Salmi, #3817, was denied the right to have Union representation at hearing in relation to disciplinary action resulting in two (2) days loss of pay."

Relief sought:

"That the Company abide by the Agreement and allow the man Union representation."

DISCUSSION AND DECISION

The facts simply stated are that the Grievant was assigned to certain work. He indicated that he would do the work but under "protest". After the lunch hour, he was called into a meeting with the General Foreman, the Foreman and the Apprentice Coordinator. The Grievant's request for Union representation at this meeting was denied. The Management representatives reviewed his responsibilities as an Apprentice and explained that the work was being assigned to him as part of his training. His attitude was discussed and a two (2) days' disciplinary lay-off was imposed upon him.

The sole question is whether the Company violated the Contract in denying the Grievant's request to have his Union Representative present. Article VIII sets forth a grievance procedure. In Section 2 of this article, the Parties provide that should a difference or dispute arise, the matter shall be handled in accordance with the prescribed procedure. The

initial step is that the employee shall first discuss "his grievance with his foreman with or without his Union representative present . . . as he chooses."

A grievance or complaint does not exist unless and until the Company by act or omission violates the Contract. As part of its contractually recognized functions of managing the plant and directing the working forces supervisors have a right to call employees into the office and impose discipline.

No grievance arises until the Company notifies the employee of its determination to impose discipline. Until such time, the employee is not in a position to know the action taken and whether he does desire to protest through the Grievance Procedure. Frequently, it is only when the discussion is concluded that the Supervisors have reached a decision as to the action to be taken.

The employee's rights are fully protected. Two procedures are described in this Contract. If the Company concludes that discharge is warranted, then under Article IX the employee is first to be suspended for five (5) days and he is not to be considered as discharged until the end of said period. During this period, the employee may request a hearing and may have the Union Representative present. If the Company maintains its position that discharge is warranted, then the employee

has the right of appeal.

Under both Article VIII and IX, it is the employee who must give some indication of his desire to protest the action taken by the Company. Under Article VIII, paragraph 190, "The duties" of the Grievance Committeeman are "confined" to the adjustment of the grievances of employees. Again, there is no grievance to adjust until some action is taken by the Company to bring it into existence.

The act of discussion per se between the Supervisor and the employee is not a basis for a grievance. It is agreed in paragraph 190 that no Union representative "shall exercise or attempt to exercise any authority or control over the functions of Management" as set forth in Article IV. In the Management clause, it is expressly provided that the Management of the plant and the direction of the working forces are exclusively vested in the Company. The right to direct, suspend for cause, discipline and discharge for cause are specifically reserved to Management. Unless and until these specified rights are first exercised, no grievance can arise. The Union has failed to sustain its burden of proof to show "any provisions of this agreement" that limits the Company's action in this matter.

Article II is a general article that provides for Union recognition. Article VII is a specific provision which spells

out the rights of employees and Union Grievance Committeemen. It is fundamental that specific provisions govern over general provisions.

Certainly, if a Union Representative were present at this meeting, he would not be engaged in Collective Bargaining - but would and could only be attempting to adjust a grievance - that had not yet come into legal existence.

The Parties have carefully provided for numerous types of Union-Management meetings but no reference is made to this type of a situation. If the Parties intended Union representatives to sit in a meeting before discipline is imposed then such an intent would be spelled out in Article VIII and in Article IX.

The facts in Arbitration 169 were considerably different particularly as to the types of meetings. There, in addition to the Superintendent, and Assistant Superintendent of the Field Forces Department, the Divisional Superintendent of Labor Relations was also present. The Arbitrator described them as being "policy-making Company officials". In that case, full investigation had already been made and the employees had admitted their guilt. One of the meetings was held four (4) days after the offense was committed.

It is very probable that the Arbitrator believed in that

case that discharge might have been the penalty and therefore, an "irrevocable decision" might have been made, "which would tend to make of no purpose the subsequent meetings provided for in Article IX, Section 1". The Arbitrator stated that the meeting was of a "special character" because in effect each employee had been called into two prior meetings - one with the Plant Guard and a subsequent meeting with higher officers in the Plant Protection Department. All of the facts essential to an investigation had been fully developed. The employees in that case were charged with acts that constitute criminal offenses.

AWARD

The grievance is denied.

(signed) Peter M. Kelliher
PETER M. KELLIHER

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