INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 4-F-25
Appeal No. 66
Arbitration No. 372

Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations Department
M. Goetz, Assistant Superintendent, No. 1 Open Hearth
E. Reed, Assistant Electrical Foreman, No. 1 Open Hearth

For the Union:

Cecil Clifton, International Representative
Don Black, Chairman, Grievance Committee
Nick Koleff, Grievance Committeeman, No. 1 Open Hearth

This grievance was filed by three employees who charge a violation of Article VII, Section 6-a-1, because a permanent opening in the Electrical Sequence was filled by an applicant who had less continuous service than any of them. The cited section is Paragraph 149, which provides:

> "...When the permanent opening develops, the Company shall fill the vacancy from the list of applicants for such sequence, who are qualified therefore, in accordance with the provisions of Section 1 of this Article ... "

Since Paragraph 149 calls for filling the vacancy in accordance with Section 1, the pertinent parts of that section are also quoted, as follows:

> "...'Seniority' as used herein shall include the following factors:
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> "(a) Length of continuous service as hereinafter defined;
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> "(b) Ability to perform the work; and
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> "(c) Physical fitness.
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> "It is understood and agreed that where factors (b) and (c) are relatively equal, length of continuous service as hereinafter defined shall govern. In the evaluation of (b) and (c) Management shall be the judge; provided that this will not be used for purposes of discrimination against any member of the Union. If objection is raised to the Management's evaluation, and where personnel records have not established a differential

> in abilities of two employees, a reasonable trial period of not less than thirty (30) days shall be allowed the employee with the longest continuous service record as hereinafter provided"

The employee with the longest service did not bid, and at the hearing the dispute was narrowed down to the claim of Zuniga, one of the three grievants. The Union conceded that the other two had no standing in this case.

The position in question is Motor Inspector Helper, No. 1 Open Hearth. This is the first job above the Labor Pool in the Electrical Sequence. It became open when the former incumbent was promoted to Motor Inspector Second Class. The Union's position is that this is not a particularly skilled job, and that therefore relative abilities are of less consequence than they would be if more skill were required, and that in relying primarily on two written tests the Company was in effect nullifying the seniority protection afforded by the contract.

The first test given by the Company tested the several applicants with reference to their knowledge and maintenance of tools and simple arithmetic. The second checked them on elementary electrical terms. The Company maintains that these were proper, since they were fairly designed to check on items directly related to the functions set forth in the job description.

The primary function stated in the job description is to "assist the Motor Inspector in performing routine maintenance inspections and repairs... to electrical equipment of the #1 Open Hearth to keep the department operating efficiently and without delays." One of the items of work procedure is stated as follows:

> "Understands very elementary electrical theory; reads simple electrical blueprints; works with D.C. and single and three phase A.C. circuits. Uses hand and power tools; uses test lights, voltmeters, and meggers. Learns job of Junior Motor Inspector."

Copies of the two tests and of the results thereof were submitted at the hearing. As stated above, they were prepared to test the employees' knowledge of simple tools and their maintenance, simple arithmetic, and elementary electrical terms. They also checked on the applicants' ability to read and write. It seems to me that the tests were reasonably related to the necessary qualifications of the job of Motor Inspector Helper, as set forth in the job description, and clearly the successful applicant did very much better in these tests than Zuniga did.

In Arbitration 195 the nature of the seniority provisions of Article VII, Section 1 were commented on. Seniority is defined as including three factors, one of which is ability to perform the work, in the evaluation of which, in Paragraph 133, Management is made the judge in the first instance. Where Management's evaluation is questioned, it must be with regard to any differential in the abilities of two competing employees. Thus,

while "ability to perform the work" is all that is called for in Paragraph 131, when there are two applicants for the open job the relative abilities of the two must be compared.

This does not mean that an employee with greater length of service may be denied his seniority rights because a rival applicant could better perform some higher job in the sequence at some future time when such a job opportunity is presented. The abilities to be compared must be those to perform the work of the job now open. It is also true, as Arbitrator Cornsweet pointed out in Award 46, that the factor of relative ability is of less consequence in the lower-rated jobs. Nevertheless, in this Motor Inspector Helper job certain qualifications are called for by the job description, and Article VII, Section 1, requires that any employee who bids for such a job must reasonably be said to have these qualifications.

Written tests are one way of ascertaining whether an employee has the required ability. However, even when used, the test is not the only evidence to be relied upon. The personnel records and actual job experience and training, are of equal or greater importance.

Where other evidence is uncertain or absent, the test, if properly designed to check on the ability to perform the job in question, is a fair and helpful way to make the determination called for in Article VII, Section 1. Subject to these cautions, I can merely re-state what I said in Arbitration 202:

> "The Union's proposed interpretation of Sections 1 and 2 of Article VII would severely restrict Management in judging the relative abilities to perform the work, despite the fact that the Agreement makes Management the judge of this factor and relative physical fitness as well. The conferring of such discretion on Management imposes the obligation on Management to be accurate and fair in its evaluation, and all reasonable and normally acceptable techniques for meeting this obligation, unless prohibited by the Agreement, may certainly be employed."
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> . . . . .
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> "Written tests constitute, then, one acceptable and reasonable way of determining ability to perform the work; certainly they can furnish credible evidence on the subject. However, Management must remember that in using them as part of the process of evaluating the relative abilities of two or more employees the test must be fairly designed to test the ability to perform the work of the job in question, and may not be used to disqualify a man who has such ability but demonstrates perhaps a lack of qualification to progress beyond the given job. If the type of test does not fairly reflect the ability to perform the given job then it could well be found that the test is improper in the exercise of the function expressly reserved to Management in marginal Paragraph 133 (Section 1, Article VII)."

AWARD

This grievance is denied.

Dated: November 7, 1960

/s/ David L. Cole

David L. Cole
Permanent Arbitrator