In the Matter of Arbitration
Between:

INLAND STEEL COMPANY

- and -

THE UNITED STEELWORKERS OF AMERICA, local Union 1010

Arbitration Award No. 378

Grievance No. 18-F-38

Appeal No. 110

PETER M. KELLIHER
Impartial 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. R. A. Morris, Assistant Superintendent, Yard Department
Mr. J. P. Pavlik, General Foreman, Yard Department
Mr. D. Misirly, Acting General Foreman, Yard Department

For the Union:

Mr. Cecil Clifton, International Representative
Mr. A. Garza, Secretary of Grievance Committee
Mr. C. Bullock, Grievance Committeeman
Mr. D. Leal, Witness
Mr. M. Connelly, Witness

STATEMENT

A hearing was held in Gary, Indiana, on October 14, 1960.

THE ISSUE

The Grievance reads:

> "The aggrieved feels that he has been demoted without cause from Sewage Disposal Helper to Laborer. Requests that he be reinstated to Sewage Disposal Helper and all monies be paid."

DISCUSSION AND DECISION

The Grievant had a trial of about twenty-seven working days on the job of Sewage Disposal Helper. The Company presented the testimony of his immediate Foreman to the effect that during this period the Grievant was not able to perform all parts of the job and that because of his awkwardness, physical stature, and fear of height, that he was not able to do the amount of work that is expected on this job. Specifically, the Company testimony is that the job requires that the Helper go out on a walkway approximately 5½ inches wide and without a rail, where it is possible to fall thirty-five feet into the tank. The Foreman states that as a result of complaints from other employees with reference to the Grievant not being able to perform this work safely and without the other members of the crew "carrying" him that he observed the Grievant twice when he was on the walkway of the tank. The Grievant appeared to be nervous and the Foreman feared that he might lose his balance. The Foreman ordered him to come in from the unprotected area and to perform only work where he could hold on to a guard rail.

The Grievant did not specifically deny that this incident took place, or if it did occur that he protested to the Foreman that he was able to safely perform the work in the unprotected area. The Company testimony is that the Grievant thereafter worked by holding one hand onto the guard rail and one hand was used in pulling the sludge rake. The Grievant was thus able to perform the work less efficiently and was not able to cover all of the areas. The evidence does show that the Grievant had some difficulty in physically lowering himself into manholes because of his short legs. After the Foreman observed the Grievant feeling around for the ladder, he then ordered the Grievant simply to work on the ground. The ejector pits have a depth of from twelve to twenty feet. While the evidence does not show that the Grievant actually suffers from claustrophobia or is unable to work in any high places, it does indicate that the Grievant is not physically or mentally qualified to work on narrow walkways.

The Grievance does not contain a charge of discrimination. The record does show that the shortest employee presently performing this type of work is approximately 2½ inches taller than the Grievant.

Under Article VII, Section 1, the Company must make the initial determination as to the factors of ability and physical

fitness. The Union, however, has a right to file a Grievance and to have its position sustained if it can show that the Company's determination was arbitrary, discriminatory, capricious, or based upon a substantial error of fact. Such evidence was not adduced in this case. The Company presented not only the Foreman who directed the employee when he was doing sanitation work, but also a Supervisor who had knowledge of the Grievant's work performance both before and after this particular assignment. He testified that the Grievant did drop bricks and that he was somewhat awkward in his movements. The Foreman in charge of the Grievant during this trial period testified that the Grievant let a hose slip when an air pump was being lowered by the hose and that this would have caused injury to employees working below if another worker had not grabbed the hose. Where a question of the safety of employees is involved, this Arbitrator does not believe it proper to ignore the Supervisor's judgment in the matter unless clear and convincing evidence requires it. The ultimate responsibility for providing safe working conditions and procedures under the law rests upon the Company--it is held liable for damages if injuries occur.

The Arbitrator is in full sympathy with the Grievant's attempt to better himself by securing this promotion and with the Union's vigorous defense of the Grievant. The great

weight of evidence, however, would indicate that if the Grievant were again assigned to this one particular job that he might cause injury to himself or other employees. No statement in this award is intended to have application to any other jobs to which the Grievant might be promoted.

AWARD

The Grievance is denied.

Peter M. Kelliher
Arbitrator

Dated at Chicago, Illinois
this 21st day of November 1960