G. 11/21/6

In the Matter of Arbitration
Between:

INLAND STEEL COMPANY

- and -

THE UNITED STEELWORKERS OF AMERICA,
Local Union 1010

Arbitration Award No. 380

Grievance No. 18-F-34

Appeal No. 103

PETER M. KELLIHER
Impartial Arbitrator

V11-14-6
V1-8

APPEARANCES:

For the Company :

William A. Dillon, Assistant Superintendent, Labor Relations Department
R. J. Stanton, Assistant Superintendent, Labor Relations Dept.
W. A. Jerndt, Assistant to the Superintendent, Labor Relations Department
H. S. Onoda, Labor Relations Representative, Labor Relations Department
H. J. Mutke, Chief Clerk, Transportation
A. L. Bratley, Yardmaster, Transportation

For the Union:

Cecil Clifton, International Representative
Albert Garza, Secretary of Grievance Committee
Clarence Bullock, Grievance Committeeman
Martin Connelly, Witness
Morris Kraus, Witness

STATEMENT

A hearing was held in Gary, Indiana, on October 12, 1960.

THE ISSUE

The Grievance reads:

> "The Transportation Clerks claim that Yardmasters E. Kaminski and A. Bratly are performing the duties of bargaining unit employees inasmuch as they have and are now checking "D" yard on the 3rd (4-12) turn. Specifically the violations are of these dates and continuing:
>
> YARDMASTER E. KAMINSKI
> December 27-28, 1958 - 3rd turn (4-12)
> January 4-5, 1959 "
> January 12-13, 1959 "
> January 20-21, 1959 "
>
> YARDMASTER A. BRATLEY
> December 29-30-31, 1958 - 3rd turn (4-12)
> Jan. 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19.
>
> Request all eligible men in the Clerical Sequence be compensated for these days because of the violation."

DISCUSSION AND DECISION

The essential question raised by this Grievance is whether supervisory employees are performing any work "of the type customarily performed by employees within the bargaining unit". The Company testimony is that the occupation of Car Checker was created in the latter part of 1948 to meet the request of the Slab Yard for detailed inventory information. According to the Company testimony this job on the third turn (4:00 p.m. to Midnight) was eliminated on November 24, 1957, because the Slab Yard no longer required this detailed information. The Arbitrator must observe that the training manual prepared by the Company in the latter part of 1956 for the Car Checker makes no mention of work in connection with slabs and particularly makes

no reference to Car Checkers delivering slab reports to the Slab Yard Office. The unrefuted testimony of a Union witness is that this work of checking slabs constituted only 10 per cent of the time of the Car Checker in an eight hour day. It is, of course, understood that he checks slabs at the same time that he was checking other cars on the tracks. An examination of the job description for Car Checker shows that this item of taking inventory of all cars of slab in the yards and submitting a report to the responsible department represented only one of the seven listed job procedures. The Company did not present specific testimony that all of the six other work procedures described for the Car Checker were unnecessary and were not being performed on the third turn. It is true that unlike the Car Checkers on the other two turns the occupant of the job on the third turn was not required to do the recopying work necessary to prepare the "Daily Yard Check". The Company testimony, however, indicates that this would require only from fifteen to thirty minutes of the Car Checker's time. It is evident from an examination of the Training Manual that this constituted merely "recopying"work . The Union testimony is that the overall activity in Yard "D" has increased. The Company in its brief, page 4, states:

> "The occupation of Car Checker was created to maintain and provide checks and information

on cars within a specific area. This information is used for the purpose of expediting car movement, avoid switching delays, and reducing car detention."

The Arbitrator must conclude that if the Car Checkers on the other two shifts do check and provide information which is used for the purpose of expediting car movement, avoiding switching delays, and reducing car detention, that this same information must be of importance to the Yardmaster on the third turn. The Arbitrator is unable to concur in the Company's statement in its brief on page 5 that the functions and work of the Yardmaster are no different today than they have been in the past and would be no different if a Car Checker were assigned on the third turn. The Yardmaster in his testimony stated that he kept "a little more running check" on the third turn than the other two Yardmasters. There is no question that when the Yardmaster on the third turn reports for duty that much of the information is then at least six or seven hours old. The testimony is that this is the reason he rides around in his car and makes a general check. The Yardmaster also testified that if there was a checker on the third turn he would be writing a new card at the end of the turn. It is his evidence that the Yardmaster coming on the Midnight to 8:00 a.m. turn must have immediate information as to the disposition of the cars. It is

difficult to believe that he does not obtain this information from the Yardmaster on the third turn in some written form. This information previously was provided by the Open Hearth Card prepared by the Car Checker on the third turn. The Union testimony is that the Car Checker on the third turn had been required to go out during the middle portion of the turn to make special checks at the request of the Yardmaster. It is difficult for this Arbitrator to find that these checks are now not necessary and that the Yardmaster is not doing all of this work. The Training Manual on page 6 indicates that the Car Checker is required to make "checks of cars on a certain track as required, keeps records for Yardmaster." It would appear that the Yardmaster is maintaining a record on the third turn. The Training Manual would also indicate that previously the Car Checker on the third turn was required to make switch orders when requested and to answer the telephone and perform all of the listed duties in the job description. Considering the fact that the work in connection with the slabs represented only ten per cent of the Car Checker's time, it is evident that he had been devoting a considerable portion of his time to the other listed job duties. It is difficult to believe that most of these same job duties do not remain and are not being performed by the Yardmaster on the third turn. The Company

certainly considered it necessary to have this work performed for a period of approximately nine years. The elimination of the slab work which the Manual would indicate may have occurred prior to November 24, 1957, constituted only a small portion of the work and could not reasonably be the motivation for a decision to dispense with the Car Checker on the third turn. The language of Article VII, Section 14, states that supervisory employees shall perform "no work of the type customarily performed by employees within the bargaining unit". This contractual language prevents the Arbitrator from adopting a de minimis doctrine, i.e., that a small amount of bargaining unit work will not give rise to a violation.

AWARD

The Grievance is sustained. The employees shall be made whole for "all money lost".

Peter M. Kelliher
Arbitrator

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

In the Matter of Arbitration Between:

INLAND STEEL COMPANY
- and the -
UNITED STEELWORKERS OF AMERICA,
Local Union No. 1010

SUPPLEMENT TO ARBITRATION
AWARD NO. 380

Grievance No. 18-F-34

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

William A. Dillon, Asst. Superintendent, Labor Relations Dept.
R. J. Stanton, Asst. Superintendent, Labor Relations Dept.
Henry Mutke, Chief Clerk, Transportation Dept.

For the Union:

Cecil Clifton, International Staff Representative
Peter Calacci, President, Local Union 1010
Morris Kraus, Yard Clerk

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on July 14, 1961.

THE ISSUE

The issue in this case requires a determination as to whether the Company complied with Arbitration Award No. 380 issued on November 21, 1960, and reading as follows:

> "The grievance is sustained. The employees shall be made whole for 'all monies lost'."

DISCUSSION AND DECISION

In analyzing the original grievance, it is noted that the grievance listed certain specific violations and referred to those specific dates "and continuing". The request was for "all eligible men in the Clerical Sequence be compensated for these days because of the violations". No evidence was presented during the original hearing with reference to any eligible men in the sequence being qualified and ready, willing and

able to perform this Car Checker work in the "D Yard". It was contemplated that subsequent to the rendition of the Award, that the Parties would then make a check to determine whether there were any employees in this category. A subsequent check has shown that there were no applications for entrance into this sequence pending at the time of the occurrence of this grievance. The method the Company would then have followed in filling this job would be to hire from the outside.

The Arbitrator is required to determine from the evidence that has been subsequently adduced whether there were any "eligible men" in the clerical sequence during this period who suffered a monetary loss and should, therefore, be made whole for "all money lost". This grievance was filed on December 27, 1958. The record shows that during the period from December 28, 1958 to March 26, 1961, all of the employees in the sequence were either working on higher paying occupations or had bid into lower paying occupations by the exercise of their own bumping rights. Certainly where the employees were working on higher paying occupations, they suffered no monetary loss. Where they were working on lower paying occupations, by their own choice,it must be deemed that they did this as a matter of personal preference. The only exception to this situation involved Mr. Ashley, who was working on the lower paid Weight Recorder occupation during the period from December 13, 1959 through December 26, 1959. Based upon the assumption that in the absence of a pattern of choosing lower rated jobs by a continual exercise of personal preference, it must be found that Mr. Ashley would have bumped into the higher rated Car Checker job during this period. Absent some evidence to the contrary, it must be found that employees do desire to work on higher rated jobs when the opportunity is available.

The Union in effect argues that a "penalty" is warranted in this case. Neither the basic Contract nor this original Award contemplates a penalty. This Arbitrator in the absence of clear and specific Contract language has no right to assess a penalty. Penalty provisions and Awards are found only in the railroad industry and are not common to industry generally. The Union must present evidence showing that some specific employee or employees actually were placed in a worse position or suffered a monetary loss because of the Contract violation. The prior incidents cited by the Union where monies were paid to a group of employees in a specific occupation all involve situations where the employees actually performed work. The only exception that the Union referred to of a non-performance of work, involved a Janitor. The Union conceded that at the time they made the decision to pay all employees in the Hooker occupation they were not then aware that the Janitor was being carried as a Hooker. The original intent was to pay only employees doing "hot work". Payment of an adjusted rate as the result of the wage inequity program is not the same as payment of a penalty in a situation where no actual work was performed. Simply stated, none of the employees in this sequence actually performed

work as a Car Checker during this period.

As the Union recognizes, it cannot be assumed that the Company would have indefinitely gone on with the assignment of employees in this sequence to either doubling over or extra turns in order to fill the Car Checker job on the third turn. This Arbitrator cannot assume that the Company would be unable to hire employees from the outside to fill this job. It would be contrary to all normal business operations to assume that the Company would have had this work done on an overtime basis. The Arbitrator is permitted to draw an inference in this case that the Company would not have had the work done on an overtime basis just as he may draw a reasonable inference from the facts that Mr. Ashley would have preferred to do this Car Checker work because of the higher rate involved.

AWARD

The record shows that only Mr. Ashley lost money during the period December 13, 1959, through December 26, 1959. The evidence does not show that any other employee lost money.

Peter M. Kelliher, Arbitrator

Dated at Chicago, Illinois

this 9 day of August 1961.