In the Matter of Arbitration Between:

THE INLAND STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA,
Local No. 1010

ARBITRATION AWARD

Grievance No. 22-G-36
Appeal No. 390
Arbitration Award No. 393

PETER M. KELLIHER
IMPARTIAL ARBITRATOR

APPEARANCES:

For the Company:

W. A. Dillon, Asst. Superintendent, Labor Relations
R. J. Stanton, Asst. Superintendent, Labor Relations
A. M. Kroner, Superintendent, No. 3 Open Hearth
O. J. Rocchi, Crane Maintenance Foreman, No. 3 Open Hearth
P. W. Nutting, Superintendent, No. 1 Open Hearth
R. L. Stempf, Pit Foreman, No. 3 Open Hearth
S. Onoda, Division Supervisor, Labor Relations
L. R. Mitchell, Division Supervisor, Labor Relations

For the Union:

Cecil Clifton, International Representative
Al Garza, Secretary of GrievanceCommittee
Joseph Gyurko, Grievance Committeeman
Walter Levy, Aggreived
John Vaprezsan, Witness
Robert Aaron, Witness
Hiram Keeton, Witness

STATEMENT

A hearing was held in Gary, Indiana, on January 10, 1961.

THE ISSUE

The grievance reads:

> "The suspension issued Walter Levy, #23311, which culminated in his discharge was unwarranted in light of all the circumstances.
>
> The aggrieved, Walter Levy, #23311, requests that he be put back to work with all his seniority rights and be paid all monies lost by him."

DISCUSSION AND DECISION

The immediate incident that led to the discharge of the Grievant occurred on August 13, 1960. The Grievant refused to pour a heat on the No. 41 furnace. He advised his Foreman that he would not operate the No. 2 ladle crane until the window was fixed. The Foreman offered to put a spike in the window and to ride in the cab of the crane holding the window shut if the Grievant would continue to operate the crane. When the Grievant refused to do this, the Pit Foreman assigned him to the No. 1 crane and had the No. 1 Crane Ladle Operator perform the work on the No. 2 crane. The regular No. 1 Crane Ladle Operator did then place a broom on the outside of the window to hold it. The Grievant was relieved from his assignment on the No. 1 crane after approximately ten minutes.

The record shows that approximately three or four weeks prior to August 13, 1960, that the Grievant did report that the latch on the window was not operating properly. He advised his Foreman in the presence of a Mechanical Repairman. The evidence would indicate that

the Pit Foreman then requested the Repairman to fix this latch. The testimony is that the latch, however, was not repaired. On August 12, 1960, the day prior to the incident, the Grievant claimed that when a tap was blown out, sparks came against this window. He was required to operate the crane with one hand while holding the front window shut with the other hand. His testimony is not controverted that at the beginning of the shift on August 12 he did blow the horn for a Crane Repairman. The Crane Repairman, however, did not perform the repair work that day. The record would further indicate that on August 13 the Crane Repair Foreman had in lining up the work scheduled this latch repair to be done on August 13. He found out, however, later in the afternoon that this work had not been performed. The Crane Repair Foreman then spoke to Mr. Levy, the Grievant, and advised him that because it was near the close of the shift that he would have to have the work performed on the following day when burning equipment could be brought to this ladle crane. The Grievant concedes that at that time he had made up his mind not to perform the work in connection with the pouring. He, however, did not advise either his Pit Foreman or the Crane Repair Foreman of his plan to refuse to pour the heat. Although he performed other work for the 45 minutes between 3:15 p.m. and 4:00 p.m. he refused to heed the signal of the Steel Pourer to pour the heat on the No. 41 furnace. It is his claim that

if the Foreman had put a spike as a wedge in the window that it might vibrate out during the operation of the crane. It is the Grievant's further contention that if the Foreman remained in the cab of the crane holding the window shut that this would interfere with his vision and the Union intimates that the Foreman might have inadvertently touched one of the control mechanisms that was activated and thus cause damage. It is the Union's contention also that under Rule 6 of the General Safety Rules for Crane Operators an exception exists that the Operator is not required to do such things as will in his judgement "be liable to injure men or damage cranes or other equipment". It is the Union's claim that if the Foreman had remained in the cab that this might have resulted in damage or injury. Considering the fact that on the day prior to August 13 sparks had come against this window while the Grievant was operating the crane during a tap blow-out, it is entirely probable that he sincerely believed that if another tap blow-out occurred that he would again be required to operate the crane with one hand and hold the window shut with the other hand. There is also some basis for a finding that if the Foreman stayed in the cab and held the window shut that there might be some impedence to the Grievant's vision or that the Foreman might during the vibration of the crane accidentally touch a control and activate it.

In analyzing the language of Article XI, Section 6, the Arbitrator must find that where an employee does believe that he is being required to work under conditions which are unsafe and beyond the normal hazard inherent in the operation, he must exercise his right under the second alternative by requesting relief from the job. All employees must be presumed to know the Contract, just as in the general field of law all citizens are presumed to know the law. Ignorance of the law is not an acceptable excuse. This plant could not operate if employees were to be excused on the basis that they did not know the Contract or the rules. The Foreman must be apprised of the fact that the employee is not engaged in simply an insubordinate refusal or is about to quit his employment. A mere statement that the Grievant would not work until the window was fixed is not sufficient. An employee has certain rights under Article XI, Section 6, but in order for these rights to become effective, he must indicate that he desires to exercise them. In a situation where the employee desires relief from a job, then the Company at its discretion has the right to assign him to other employment that might be available in the plant. It is important for the employee to put Supervision on notice of the exercise of this specific right in order that he can without question return to the particular job at some later time. The following quotations from Arbitration Award No. 208 are significant:

> "Admissions or statements by the employee contradicting the assertion may cast doubt on the sincerity. A failure to be able or willing to explain why a fear had developed

> as to the safety of a job which the employee has frequently and recently been performing without objection or protest may be enlightening.
>
> Where it is shown by whatever method is available or effective that an employee is not in good faith when he asserts his belief, and asks for relief from a job, then we have the case of an employee refusing a normal work assignment. In such a case, discipline will be warranted.
>
> If the second alternative is followed, i.e, where the employee insists on relief from the job, if it is found that he sincerely believes what he asserts, then he would be within his rights as stipulated in the Agreement in doing so and in insisting that he retain his right to return to the job."

A reading of the above excerpts from the opinion of the Permanent Arbitrator shows that the employee is expected to "ask for relief" or invoke the relief provision of Article XI, Section 6.

While it is entirely probable that some misunderstanding did exist even during the conference with the Superintendent, the Company cannot be held liable in damages because the Grievant failed to understand that he had the right set forth under Article XI, Section 6. The Company also cannot be penalized for the Grievant's ignorance of the Contract.

Despite the extenuating circumstances that exist, the consideration that weighs most heavily against the Grievant in this case is the fact that he appeared to be deliberately waiting until a critical time in the operation to refuse to perform the work. By his own admission he had resolved at about 4 p.m., while conversing with the

Crane Repair Foreman, to refuse to perform the work. He made no attempt at this time to advise any member of supervision of his plan. The Operator was instructed under the general safety rules to "report any unusual conditions or uncompleted repairs" on the "Daily Crane Report". The evidence shows that in the period of July 17 to, and including, August 13, 1960, the Grievant deliberately refused to make out and deposit "Daily Crane Reports" in the proper box. If he had made out these "Daily Crane Reports", it would be the best evidence that he had been attempting during this period of time to have the window latch repaired.

The Arbitrator must observe that no discipline was actually issued to the Grievant for his alleged violations on May 3 and May 8 with reference to his continuing to eat lunch after he has been instructed to perform certain work. The record, however, does show and the Grievant admits that he was repeatedly warned for his failure to fill out Crane Reports. Although he was specifically advised that he had a right to file a grievance if he believed that he was not required to prepare these Reports under the terms of the Contract, he failed to avail himself of the grievance procedure.

While the Arbitrator must find that mitigating circumstances do exist in this case that would not permit sustaining the discharge the Grievant's statements and conduct tend to show that he lacks ability to "play on the team". The Grievant did indicate at the hearing

that hereafter he would file Crane Reports and his reinstatement is conditioned upon his doing so. Considering the fact that the record does not show that the Grievant has ever received a disciplinary lay-off, the mere failure to file Crane Reports would not in itself constitute cause for discharge.

Although the Arbitrator is constrained to find that the Grievant should be reinstated, certainly considering his failure to specifically request relief from this job and his failure in discussions with the Superintendent to clearly indicate that he was relying on this particular Article and Section, no possible basis can exist for an award of back pay. The Grievant must bear the responsibility for the situation he brought about.

The Arbitrator in considering the attitude and conduct of the Grievant has serious doubts that he will be able to continue in the employment of this Company unless he demonstrates a change in his attitude not only in relation to the Company, but also to his fellow employees.

AWARD

Within five (5) days after the receipt of this award the Grievant shall be reinstated with full seniority, but without compensation for earnings lost.

Peter M. Kelliher

Dated at Chicago, Illinois
this 21 day of March 1961.