In the Matter of Arbitration Between:

INLAND STEEL COMPANY

-and -

UNITED STEELWORKERS OF AMERICA,
Local Union 1010

ARBITRATION AWARD
No. 397
Grievance No.10-F-84
Appeal No. 144

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

FOR THE COMPANY:

W. A. Dillon, Assistant Superintendent, Labor Relations
L. E. Davidson, Assistant Superintendent, Labor Relations
G. R. Haller, General Foreman, Plant #1 Mills
M. S. Riffle, Division Supervisor
H. S. ONoda, Labor Relations Representative
R. J. Stanton, Assistant Superintendent, Labor Relations

FOR THE UNION:

Cecil Clifton, International Representative
Joseph Penkowski, Steward
Ralph Crawford, Assistant Griever
William Bennett, Grievance Committeeman
Al Garza, Secretary of Grievance Committee

STATEMENT

Pursuant to notice, hearings were held in Gary, Indiana commencing January 11, 1961. A full Transcript of the proceedings was taken.

DISCUSSION AND DECISION

During the week of February 15, 1959, the No. 1 Blooming Mill was scheduled for a seventeen turn operation and the Shear Recorder and Steel Tracer jobs were, therefore, scheduled the same number of turns. The Company knew that it was necessary to schedule labor pool employees on these jobs in order to provide an adequate work force as required by Article VI, Section 8. There is no question that the Grievant, Mr. J. Kelly, had a higher departmental seniority standing than the employee who was scheduled on Sunday, February 15 in the higher rated Shear Recorder job. The essential question is whether on this day, the Company was contractually obligated to assign the employee with the highest departmental service to the job that would afford the highest earnings opportunity. The schedule was prepared on Thursday of the prior week and it must be noted that the Grievant was scheduled to work February 15th on the 4 to 12 turn while the junior employee was scheduled on the 12 to 8 turn. The Union claims the Company's position in Grievance No. 10-F-36 is inconsistent with its present position. In Arbitration Award No. 332, Mr. Greene was scheduled on a Thursday in the occupation of Steel Tracer four days during the week in question, On one of these days, an employee scheduled in a higher rated occupation was absent. The Company filled the job of the absent employee by assigning a Labor Pool employee junior to Mr. Greene in departmental service. The Union there took the position that the Company should have permitted the oldest employee, who was a member of the Labor

Pool, to exercise his seniority rights to go to the highest paying temporary opening which occurred on his turn and in his department. The Company took the position that Mr. Greene at the time the vacancy occurred was not in the Labor Pool by virtue of the prior scheduling. The Company there relied, as shown on the Award, on Article VI, Section 8. It contended that it was required to schedule an adequate work force and that once the employee was scheduled to fill a vacancy in the sequence, he no longer thereafter had any right to move up on a day-to-day basis in preference to employees who were still in the Labor Pool when the vacancy occurred during the week. In the present case before this Arbitrator, the Union alleges a violation of Article VII, Section 6 (Paragraph 146). Permanent Arbitrator Cole, in Arbitration Award No. 332, states:

> "In Paragraph 146, upon which the Union relied in the instant case, I note two significant thoughts. Temporary vacancies in the lowest job in a sequence (1) may be filled by the employee in the labor pool in accordance with seniority standing, and (2) by those most conveniently available. The permissive 'may' is in contrast to the mandatory 'shall' which appears in this paragraph both before and after this provision in which 'may' is used. The reference to those most conveniently available must be taken to be the parties' recognition of certain unavoidable practical problems that arise in connection with Management's obligation to schedule adequate forces and its right to operate as efficiently as possible."

This Arbitrator, in analyzing the language of Article VII, Section 6(a) must first observe that the Parties agree that extended operations, vacancies, are temporary vacancies within the meaning of Section 6, Paragraph (a). The fact that the Company knows that it must schedule an adequate work force

under Article VI, Section 8, to cover extended operations, does not in any way militate against these vacancies being regarded as coming within Paragraph a. The language is clear and unambiguous. These vacancies are to be "filled by the employee on the turn." The Grievant here was not "on the turn." Prior Awards recognize that the Company is under no obligation to so schedule employees so that they can be "on the turn." The Company has no obligation to make an employee "most conveniently available" by its scheduling.

This Arbitrator must note that in several prior arbitration Awards, the Parties were clearly made aware of the distinction between the terms "may" and "shall". Even if it be conceded that the Company should have made the Grievant "conveniently available", the same sentence contains the phrase "may be filled". Because the Company exercises a right in a particular manner over a long period of time, does not convert the essentially permissive right into an obligation. The quotations from the Transcript in the earlier case cited by the Parties makes it apparent that the Company at all times alleged that the exercise of its rights were based upon the permissive term "may". The Company Representative there stated:

> "Now, in preparing our case today, we think we have shown you that Article VII, Section 6(a), Paragraph 146 of the Agreement does not privide that the senior Labor Pool group employe, (1) has the right to be scheduled on the highest paying job, or (2) that he has the right to be made most conveniently available, so that he is in a position to be upgraded to fill a temporary vacancy on the higher paying job."
>
> (Tr. 121)

While the Company here reaffirmed in this case its intention, where circumstances permitted, to attempt to afford the highest earnings opportunity to the senior employee, there is, however, no language to be found in this agreement that would require the Company to schedule the Grievant for the "highest paying vacancy:. The weight of the evidence (Company Exhibit B) would indicate that the Company has in fact not followed a consistent practice of scheduling the employee with the highest departmental seniority to vacancies with the highest earnings opportunity.

The Union phrased the present issue as follows:

> "Whether the Company violated Article VII, Section 6 of the Agreement when they failed to schedule J. Kelley to a temporary vacancy on the 12-8 turn on February 15, 1959."
> (Tr. 89)

The Company scheduled the Grievant as a Steel Tracer. The Union states the issue in the prior case:

> "The basic issue, in my opinion, in 10-F-36 was once they had scheduled an employe, whether he could exercise his departmental seniority to move from that job to a higher vacancy."
> (Tr. 90)

While this Arbitrator does not believe the issues are parallel, if the issue in this case were to be regarded as the same as in Grievance No. 10-F-36, then the Permanent Arbitrator has entered a denial Award.

AWARD

The grievance is denied.

Peter M. Kelliher
PETER M. KELLIHER
Impartial Arbitrator

Dated at Chicago, Illinois
this 8 day of June, 1961