In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 409
Grievance No. 10-F-109
Appeal No. 221

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

G. R. Haller, General Foreman, Plant #1 Mills Dept.
W. A. Dillon, Asst. Superintendent, Labor Relations Dept.
R. J. Stanton, Asst. Superintendent, Labor Relations Dept.
M. S. Riffle, Divisional Supervisor, Labor Relations Dept.
R. Rogich, Foreman, Plant #1 Mills Dept.

For the Union:

Cecil Clifton, International Representative
William Bennett, Grievance Committeeman
M. Harris, Aggrieved
D. Valesquez, Steward
Al Garza, Secretary, Grievance Committee

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on April 10, 1961.

THE ISSUE

The grievance reads:

"The aggrieved, Madison Harris, #1912, contends the Company was in violation of the Collective Bargaining Agreement when he was denied his fifth day of work in the 19" Mill sequence in favor of a younger employee. The aggrieved claims higher sequential seniority than R. Loper, #1701, since Loper filled an opening in the 19" Mill sequence which occurred while the aggrieved was in the armed forces. The aggrieved is claiming his rights as a veteran as guaranteed to him under the Collective Bargaining Agreement.

Aggrieved be paid one day's pay for 19" Mill Shear Helper for the week of 11-29 to 12-5-59."

DISCUSSION AND DECISION

The Grievant was a Mill Production Clerk in the 36" Rolling and Shearing sequence when he entered military service on June 29, 1957. Mr. Loper was promoted from the Labor Pool to fill a permanent vacancy on the Shear Helper job on the 19" sequence on August 11, 1957. As a result of Permanent Arbitrator Cole's Award in Arbitration No. 167 being made effective on December 3, 1957, Mr. Harris, the Grievant, lost his sequential standing and was placed in the Labor Pool effective that date. Upon his return from military service, he requested to be placed in the 19" Rolling and Shearing sequence and the Company immediately started training him for the bottom job in the sequence, i.e., the Shear Helper job. During the week of November 29, 1959, Mr. Harris worked two turns training as a Shear Helper. On Friday, December 4, 1959, when he was qualified for this job, he was assigned to the Shear Helper work and also worked this same position on Saturday, December 5. During all of this week, Mr. Loper worked either as a Transfer Tilt Table Operator or as a Hot Bed and Shear Operator. The Grievant has not been trained for either of these positions.

At the time of the posting of the schedule for the week in question, the Grievant had not been qualified for the Shear Helper position. The Arbitrator is unable to find any contractual basis even conceding, for the purposes of argument, that the Grievant was entitled to greater sequential standing that would permit any payment to the Grievant of one day's pay for the work week in question. With reference to the Grievant's rights under applicable federal statutes, the controlling principle for purposes of the present case therefore, seems to be as stated by the Fourth Circuit Court of Appeals in Bostian v. Seaboard Airline R. Co., 211 F.2d 867, 868, 34 LRRM 2047 (1954):

> "We think it clear that the statute has been complied with. It is well settled that what the employee is entitled to under the statute is to be restored to the position which he left with the seniority that he would have had, if he had remained working in that position, not to be promoted to another position that he might have obtained if he had not left or to be awarded seniority in such other position."

It may be true that if the Grievant had not been in the armed services that he would have sought this vacancy which was filled by Mr. Loper. Under the above quoted court decision, however, he does

not have the right "to be promoted to another position that he might have obtained if he had not left". The Company did institute a "reasonable program of training" for the Grievant as soon as he returned. Clearly, however, he did not have a right to be placed immediately in the Shear Helper job prior to his completing the training period. (See United States Steel Corporation 25 LA 78).

In analyzing Award No. 122 cited by the Union, this Arbitrator must find that the decision in that case is based entirely on the waiver provisions of the contract and not upon an interpretation of the military training provisions.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

this 15th day of June 1961.