In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 452

Grievance No. 21-G-6
Appeal No. 367

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
R. H. Ayres, Assistant Superintendent, Labor Relations
H. S. Onoda, Labor Relations Representative, Labor Relations
D. W. Stoukey, Spark Test Foreman, Metallurgical Department
L. R. Mitchell, Divisional Supervisor, Labor Relations

For the Union:

Cecil Clifton, International Representative
Peter Calacci, International Representative
Al Garza, Secretary, Grievance Committee
George Germek, Witness
Joe Marszalek, Aggrieved
John Wiseman, Griever
Earl Bickle, Witness

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on September 22, 1961.

THE ISSUE

The grievance reads:

"Aggrieved employee, Joseph Marszalek, #24290, alleges that he bid for the occupation of Assistant Spark Tester and in accordance with the Collective Bargaining Agreement he was the oldest employee entitled to the job.

The Company was in violation of the Collective Bargaining Agreement when they gave Stanley Spasske, #24253, the job.

Joseph Marszalek be put on the job opening of Assistant Spark Tester and be paid for all moneys lost."

DISCUSSION AND DECISION

This grievance in effect objects to the Company's evaluation of the factor of "ABILITY TO PERFORM THE WORK". Because under the language of Article VII, Section 1, if the Union raises an objection "to the Management's evaluation", then a determination must be made as to whether the personnel records have established "a differential in abilities of the two employees". It is only when this differential is not established by personnel records that a trial period is to be allowed to the employee with the longest continuous service record.

From an examination of the personnel records and the testimony and statements at the hearing, the principal difference in the personnel records relates to the junior employee's 117 turns worked as an Assistant Spark Tester as of the time of the posting of this job.

This Arbitrator in Arbitration Award No. 352 has stated that the number of turns worked or experience on a particular job is "not necessarily controlling". As this Arbitrator and other Arbitrators have stated, determinations in these type of cases must be in the light of the particular facts of each case. Other phases of the personnel record of the competing employees must also be given consideration. Experience on "related type" work may also be significant. This Arbitrator does recognize that experience while not the sole consideration, certainly is a factor and concurs with the following statements made by Arbitrator Sietz made in Award No. 258:

> "The Company, on the other hand has made at least a prima facie case that the grievant had less ability to do the higher paid Mechanical Sequence jobs than the junior employees by alleging, without contradiction, that they did have greater <u>experience</u> therein by filling temporary vacancies while the grievant was serving as Piler. Accordingly, although the record is less than satisfactory on this point, it compels a finding for the Company.
>
> This case rests, rather, on the ground that the Company, based on the relative experience of the competing employees for higher paying jobs in the Mechanical Sequence has shown a prima facie case that their ability to perform such jobs was not relatively equal to that of the grievant. The Union has not shown that this decision by the Company was wrong or lacking in rational and reasonable basis."

There can be no question that successful performance of the actual job must be regarded as an element in determining the present ability to perform the work. In Arbitration Award No. 445 this Arbitrator in sustaining the grievance of the Union did rely on the testimony presented

that the senior employee had filled "137 turns as Temporary Motor Inspector Helper". In that Award this Arbitrator did quote with approval the following statement of Arbitrator Cole in Arbitration Award No. 372:

> "'However, even when used, the test is not the only evidence to be relied upon. The personnel records and actual job experience and training, are of equal or greater importance. (Emphasis added.).'"

There can be no question that all of the Arbitration decisions have considered "actual job experience" as a significant factor in determining the question of "a differential in abilities". The record does not permit a finding that the work that the Grievant performed can be considered "related type" experience that would be helpful to an employee learning the Assistant Spark Tester job.

The testimony is that the Assistant Spark Tester job cannot be learned in a short period. The Union witness conceded that although he served as an Assistant Spark Tester for approximately forty-two turns as of that time "he did not learn the job completely". (Tr. 25).

The prior Arbitration Awards indicate that permanent Arbitrators under this Contract have hesitated to sustain a claim of "local working condition" involving an interpretation of Article VII because the seniority provisions are dealing with relative rights of employees and not just a benefit to a certain employee or group of employees in relationship to the Company. Although some doubt exists whether an alleged local condition to promote simply on the basis of length of service is not inconsistent with the Article VII, Section 1 provision that the factors of ability and physical fitness are to be evaluated by the Management, the Arbitrator in this case cannot find that the testimony actually supports any such claimed past practice. While the testimony of the Union witness would indicate that in his experience as a Grievance Committeeman "older employees" have been promoted to this job, there is no testimony in this record that in those instances junior employees with actual experience on the job also applied for the permanent promotion. The Union witness conceded that he did not receive copies of the employees' applications and had no basis for giving an opinion as to the prior experience of the competing employees. (Tr. 9 and 10). The Union witness also testified that duringthe period that he served as a Grievance Committeeman, permanent and temporary vacancies were filled "from the pool of learners". (Tr.13). The junior employee in this case was a learner at the time of his promotion.

AWARD

The grievance is denied.

Dated at Chicago, Illinois
this 1st day of March 1962.

Peter M. Kelliher