INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 5-G-19
Appeal No. 370
Arbitration No. 453

Opinion and Award

Appearances

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
R. H. Ayres, Assistant Superintendent, Labor Relations
L. R. Mitchell, Divisional Supervisor, Labor Relations
L. E. Kraay, Superintendent, No. 2 Open Hearth
H. H. Cummins, Superintendent, Industrial Engineering Department
Louis T. Lee, Industrial Engineer, Industrial Engineering Department
H. S. Onoda, Labor Relations Representative, Labor Relations
W. J. Pneuman, General Foreman, No. 2 Open Hearth
Ernest Hartman, Stock Pusher Foreman, No. 2 Open Hearth

For the Union:

Peter Calacci, International Representative
Cecil Clifton, International Representative
Al Garza, Secretary, Grievance Committee
Leo Hernandez, Griever
E. Simmons, Witness
D. Brinkley, Witness
B. Luque, Witness
A. Allande, Witness

Two issues are raised by this grievance: (1) whether the No. 2 Open Hearth Switching Crew is adequate; (2) whether supervisors are performing bargaining unit work in violation of Article VII, Section 14.

There is little dispute over the facts. The Company concedes that Stock Pusher Foremen throw switches, couple cars, and give train or car movement signals regularly when a Switchman is not available. Such work is indisputably within the job description of the Standard Gauge Switchman.

The cited contract section is Paragraph 177, as follows:

> "A supervisory employee shall perform no work of the type customarily performed by employees within the bargaining unit, except when necessary due to emergencies or to other causes beyond the control of the Company, or for purposes of instructing and training employees."

The Company believes it is justified in having these Foremen do such work for three reasons: (1) this is not work which has been exclusively of the type customarily performed by bargaining unit employees, but has been an integral part of the supervisory functions of the Stock Pusher Foremen;

(2) such work was done by these Foremen before the first Union contract and ever since with no challenge by the Union; (3) the Switchman force scheduled by the Company is adequate for the work to be done.

The weaknesses of the Company's position are apparent. The quoted provision of the Agreement does not protect the bargaining unit employees against intrusion by supervisors only in situations in which the employees customarily perform a type of work exclusively. If a contract provision is clear and unambiguous its meaning may not be varied because there has been a delay in protesting a violation, -- such delays are significant only if there is room for doubt as to meaning of the language used. Moreover, for the Company's prior practice to be a denial of the Union's rights, it must be such as would be under the protection of the principles of Section 5 of Article XIV (Paragraph 262), the section dealing with Local Conditions and Practices. As I have ruled in at least two previous cases in which the Union invoked this section, such local conditions or practices must be consistent with the Agreement, for Paragraph 262 so provides. While the Local Conditions and Practices section is designed to give protection to employees, if its Conditions are met, surely when the Company relies on past practices it must also expect to meet similar requirements. Also, Paragraph 177 does not have as its purpose the preservation to supervisors of the work they have been customarily performing; the protection runs only to bargaining unit employees.

The adequate crew issue has a peculiar twist in this case. It is the Union's view that the crew is inadequate because of the physical area the crew must cover, not because the employees are now overburdened with work, and that it is for this reason that the Company has supervisory people do some of their work. Unquestionably, this is done to keep work moving at the furnaces, but this is one of the essential purposes in assigning crews. This is to say that the Foremen are doing the bargaining unit work in question because the present crews are unable to do it within the time the Company desires, and this does have reflection on the adequacy of the crew, considering the given circumstances and functions of the job in question.

Arbitrator Kelliher's award in Arbitration 381 is entirely consistent with the reasoning I am applying here, and his award and mine in this case are both dictated by the provisions of Article VII, Section 14. Neither of the exceptions to the broad rule laid down in that section is present under the facts of this case.

AWARD

The grievance is granted.

Dated: March 29, 1962

/s/ David L. Cole
David L. Cole
Permanent Arbitrator