In the Matter of Arbitration Between:

INLAND STEEL COMPANY
- and -
UNITED STEELWORKERS OF AMERICA,
Local Union 1010

ARBITRATION AWARD NO. 458

Grievance No. 16-G-38
Appeal No. 403

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations Dept.
G. Visak, Temper Mill Turn Foreman, No. 1 and No. 2 Cold Strip
R. J. Stanton, Assistant Superintendent, Labor Relations Dept.
J. Borbely, Divisional Supervisor, Labor Relations Department
H. S. Onoda, Labor Relations Representative, Labor Relations Dept.

For the Union:

Cecil Clifton, International Representative
Al Garza, Secretary of Grievance Committee
Ted Rogus, Grievance Committeeman
E. Lessie, Assistant Griever
M. Matusiak, Steward
L. Mrozinski, Grievant

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on November 20, 1961.

THE ISSUE

The grievance reads:

"Aggrieved employee, L. Mrozinski, Ch. #14194, alleges that the company is in violation of the CBA, when they, on the week of June 26 to July 2, 1960, scheduled a younger employee, D. Johnson, Ch. #14643, to work on the aggrieved's regular job.

Aggrieved requests the company to pay him all moneys lost at his regular rate of pay."

DISCUSSION AND DECISION

The evidence in this case shows that the earnings on Sheet Temper Mill No. 26 (Maronic's Crew) had been consistently higher than the earnings of Sheet Temper Mill No. 25. The Grievant, a Catcher, had been assigned to Maronic's Crew for approximately three years prior to June 26, 1960. During that week, however, the Company scheduled a "younger employee", D. Johnson, to work as the Catcher on Maronic's crew rather than the Grievant.

Unlike the factual situation in Award No. 410, it was known prior to the week of June 26 that the earnings on Crew No. 26 would be higher than on Crew No. 25. This is not a situation like in Award No. 410 decided by this Arbitrator where an employee could make a determination "after the fact" that the earnings would have been higher if he had been assigned to a particular job.

In Arbitration Award No. 321, Maronic's crew filed a grievance that although they were scheduled to work on the No. 26 Sheet Temper Mill and work was available on that Mill they were directed to work on the No. 25 Mill and suffered a loss in earnings for which they requested that they be made whole. In this particular case it is true that the Grievant was "scheduled" on the No. 25 Mill. The issue, however, arises as to whether this scheduling of an employee who had regularly been a member of Maronic's crew would not, in effect, result in rendering ineffective Arbitration Award No. 321. The following portions of Arbitration Award No. 321 are here quoted:

> "The Company's position raises a question of contract interpretation. It is that when grievants were put on the #25 Mill instead of the #26 Mill they were not directed to take a job in an occupation paying less than the rate of the occupation on which they were scheduled or notified to report, since the occupations in which they worked on both Mills are identical. They are the three occupations of Roller, Catcher and Feeder, which are the only occupations in the straight line, multi-occupation Temper Mills sequence.
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> There are two weaknesses in the Company's position. The first is that Article VI, Section 3, does not restrict itself to occupations. It speaks of a job in an occupation. It also speaks of the job in an occupation paying less than the rate or rates of the occupation upon which the employee was scheduled to work. This suggests that the parties contemplated more than merely the base rate of the occupation when they agreed upon this contract provision. They must have had in mind the incentive rates as well.

> The second weakness is that the quoted language is ambiguous, for the qualifying phrase 'paying less than the rate or rates of the occupation upon which he was scheduled' could apply to either the job or the occupation, and the practice in this department apparently has been to give the #26 Mill crew its average hourly earnings when temporarily assigned to the #25 Mill. On the evidence presented, which is not clean-cut, and is largely a matter of personal recollections, this seems to have happened several times, except when the employees would otherwise have been demoted or laid off from the job for which scheduled. This exception is specifically provided for in the Section 3, and does not detract from the interpretative value of the practice, unsatisfactory as the evidence thereof may be.
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> Management's emphasis on its general right to assign employees to whatever work it deems desirable or necessary has no pertinence to the instant issue. Granting the fact that it has this right, the question still remains as to the rate or rates the employees should be paid when it is done. In this case the answer is found in the quoted section of the Agreement."

In the above arbitration, Permanent Arbitrator Cole found that the Parties had in mind "the incentive rates as well". It is evident from both the Company and the Union testimony in this record that the Parties were well aware of the consideration of the "money" involved. The Union testimony is that there has been a past practice to allow the senior employee here to work on the "money machine". (Tr. 9 and 11). The Company testimony indicates that the Parties have followed an interpretation that where an employee might be promoted to a job that is in a higher sequential step that if it pays less money on an incentive basis than a job that the employee regularly performed in a lower sequential step that the employee receives the differential. The Parties, in a sense, took into consideration the past practice that must be found in this particular case both from the Award of Arbitrator Cole and the testimony in this record the fact that the essence of a "promotion" was the "money" and that employees were granted protection as to the money that they had previously earned. Arbitrator Cole found that it was the practice in this department to "give the No. 26 Mill crew its average hourly earnings when temporarily assigned to the No. 25 Mill". The finding in Arbitration Award No. 321 would be circumvented if individual members of the No. 26 Mill crew could be scheduled or temporarily assigned to the No. 25 Mill without any protection as to his earnings. Whether the Company does this by way of "scheduling" or

by way of assignment the result is the same. Both Arbitrator Cole and this Arbitrator have upheld the Company's right to assign employees to whatever work it deems "desirable or necessary". The issue in question remains as to what the earnings of "the employees should be when it is done". This finding is limited to the specific past practice with reference to these crews and the implementation of Arbitration Award No. 321.

AWARD

The grievance is sustained.

Peter M. Kelliher

Dated at Chicago, Illinois,

this 9 day of March 1962.