In the Matter of Arbitration Between:

ARBITRATION AWARD NO. 478

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

Grievance Nos. 20-G-53 and 20-G-54
Appeal Nos. 482 and 483

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. C. Sanders, General Foreman, Trucking Division, Stores Department
Mr. W. A. Dillon, Assistant Superintendent, Labor Relations Department
Mr. A. T. Anderson, Divisional Supervisor, Labor Relations Department

For the Union:

Mr. C. Clifton, International Representative
Mr. Jesse Orrick, Aggrieved
Mr. James Balanoff, Griever

STATEMENT

Pursuant to proper notice, a hearing was held in Miller, Indiana on February 12, 1962.

THE ISSUE

Grievance No. 20-G-53 reads:

"Jesse Orrick, #2024, reported for work October 27, on his regularly scheduled turn. He was sent home and was not paid report-out pay.

Jesse Orrick, #2024, be paid 4 hours reporting pay for Thursday, October 27, 1960.

Grievance No. 20-G-54 reads:

"Jesse Orrick, #2024, reported off for work on November 2, on his regularly scheduled turn. He was sent home and was not paid report-out pay.

Jesse Orrick, #2024, be paid 4 hours reporting pay for Wednesday, November 2, 1960."

DISCUSSION AND DECISION

The Grievant, a Truck Driver, was notified by a posted notice dated October 6, 1960, that he was to "furnish" a telephone number so that the Company would have a reliable means of prompt communication if it became necessary to notify him that work was not available. (Co. X A). Although approximately three weeks had expired after this notice, the Grievant failed to furnish the Company with a telephone number prior to the incidents of October 27 and November 2.

Both Parties in their pre-hearing briefs cite Arbitration Award No. 334. This Arbitrator must presume from this citation that the Parties each believe Arbitration Award No. 334 to be pertinent to a determination of this issue. Each of the Parties had a right to seek a clarification of Arbitration Award No. 334 from Arbitrator Cole if they so desired. Arbitrator Cole in Arbitration Award No. 334 makes the following finding:

> "The question in this case is really whether the Company should be penalized for not succeeding in getting word to the employees,--whether the efforts it made to do so amounted to reasonable compliance with the contract provisions.
>
> This question must be answered, if possible, by the provisions of the Agreement and the reasonable interpretations of such provisions. An employee scheduled or notified to report for work who arrives at the plant and finds no work available, as specified in Paragraph 122, is entitled to four hours of reporting pay:
>
> > 'unless the Company has notified him at the place he has designated for that purpose not less than two (2) hours before his scheduled starting time.'
>
> Paragraph 123 declares:
>
> > 'It shall be the duty of the employee to keep the Company advised of a reliable means of prompt communication with him.'
>
> Eighteen employees, out of 86, scheduled for the 8-4 turn had no work available. Of these, seven had listed telephone numbers with the Company. Knowing by midnight (eight hours before reporting time) that they would not be needed, the Company tried to telephone these 18 employees. Only five of the seven answered their phones. No effort was made to contact the other

eleven. Thirteen employees reported for work at 8:00 a.m. and were sent home. These included the two who did not respond to the telephone calls made to the numbers they left with the Company.

The question basically is whether the Company had made all the efforts reasonably required under the above-quoted provision, to excuse itself from liability for failing to notify these employees. Under Paragraph 123, employees could have been asked to provide other 'reliable means of prompt communication,' where the individual employee himself had no telephone. Perhaps a neighbor's telephone, or that of a fellow-worker living nearby might have been *listed and used in such a case. And, of course,* there were also the possibilities of messenger or telegraph service. Where there is a contractual duty to notify employees not to report for work, this duty is not discharged by saying merely that only seven out of 18 had telephones. Some additional effort was indicated, even if it might had not have turned out to be completely successful. No relief is granted the two who did not respond to the telephone calls placed to their numbers because they had represented that *these numbers constituted a reliable means of* communication. The likelihood is that other means of communication, like telegraph, would have met similar difficulty. In any event, in placing calls to the designated numbers the Company made reasonable effort to comply with its contractual duty."

Arbitrator Cole by using the term "penalized" recognized that Article VI, Section 5, constituted a "penalty" provision. It is recognized by Courts and Arbitrators that a Party who seeks to have *a penalty imposed must come in with "clean hands" and show that he has* fulfilled his obligations before a penalty will be sustained against the other Party. By the use of the term "efforts" in both the first quoted paragraph and the fourth quoted paragraph, Arbitrator Cole clearly recognized that the basic "question" was whether the Company made the "efforts reasonably required" under the Contract. It is patent that in dealing with the possible "efforts" open to the Company one of these possibilities was that "employees could have been asked to provide other 'reliable means of communication' where the individual employee had no telephone. Perhaps a neighbor's telephone or that of *a fellow worker living nearby could be used in such a case."*

Under the facts of the particular case now before this Arbitrator, the Company did ask the employee to provide a telephone number of a neighbor, fellow worker, etc. This constituted one of the expected and reasonable "efforts" referred to by Arbitrator Cole. When Arbitrator Cole states that "there was also possibilities of messenger and telegraph service", he was indicating other alternative means of communication. This is a clear indication that Arbitrator Cole was requiring that only one of the alternative "efforts" be shown. The use of the terms "also" and the conjunctive "or" shows that the requirement was that one of these efforts should be made and not all of them. The Company in this case made the effort referred to above in asking the employee to provide the telephone number of a neighbor or fellow worker.

This Arbitrator in analyzing the language of Article VI, Section 5, and reading it as a whole must find that the use of the terminology "notify him at the place he has designated for that purpose" in Paragraph 122 shows that the Parties were not limiting the "place" to the employee's home. The Parties appear to recognize that it might be possible to notify the employee at some other place than the employee's home if the employee so designated.

When the Parties adopted the provisions of Article VI, Section 5, they were aware of the fact that the Company is given the employee's home address at the time he enters the employment of the Company. While Paragraph 122 places an obligation upon the Company, Paragraph 123 puts a condition precedent obligation on the employee. It is the duty of the employee to keep the Company "advised of a reliable means of prompt communication with him". This again does not mean that the employee can only be notified at his home. By the use of the term "prompt", the Parties intended more than the giving of an employee's street address. This Arbitrator cannot construe Article VI, Section 5 as though Paragraph 123 did not exist. If Paragraph 123 means that an employee need only furnish his home address, or in the language of Paragraph 122, "the place he has designated for that purpose", then Paragraph 123 would have little purpose.

Whatever questions might possibly be raised as to the interpretation of Arbitrator Cole's Award, he certainly did not intend the result to be that an employee, although requested to furnish a telephone number, could fail to do so and yet assert a penalty made possible only by his refusal to furnish a prompt means of communication with him. It would appear that in the grievance settlements referred to by the Union, the incidents either occurred prior to Award No. 334 or the employees had telephone numbers listed with the Company.

This Arbitrator must find that the Company did make a reasonable effort specifically recognized as such by Arbitrator Cole when it requested this employee to furnish a telephone number.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

this 8th day of June 1962.