In the Matter of Arbitration Between:

INLAND STEEL COMPANY

- and the -

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Local Union No.

ARBITRATION AWARD NO. 487

Grievance No. 17-G-64
Appeal No. 500

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. William Dillon, Assistant Superintendent, Labor Relations
Mr. J. Federoff, Divisional Supervisor, Labor Relations
Mr. R. H. Ayres, Assistant Superintendent, Plant No. 2 Mills
Mr. C. Sherman, General Sorting Foreman
Mr. N. Keckich, General Shipping and Warehouse Foreman

For the Union:

Mr. Cecil Clifton, International Representative
Mrs. Yolanda Toth, Grievant
Mr. Lonnie Porter, Grievance Committeeman
Mr. Al Garza, Secretary of Grievance Committee

STATEMENT

Pursuant to notice, a hearing was held in Miller, Indiana, on May 16, 1962.

THE ISSUE

The Grievance reads:

"On September 6, 1960, the Company displaced Y. Toth, #16728, from her regular job position of Carton Machine Operator in the Tin Mill Salvage Sequence and placed her in the Labor Pool. The Company is operating the carton machine with younger employees and the entire sequence is working a 40 hour week.

The Company place Y. Toth, 16728, into her old job position and pay her the difference in moneys due to her."

DISCUSSION AND DECISION

It is one of the Company's contentions that the same basic issue was presented in Grievance No. 17-F-2 in 1957. The Arbitrator, however, in reviewing the Labor Relations Step answer to said grievance cannot find that this prior grievance was either identical or involved the same basic issue. In the prior grievance the Parties were not confronted with a situation where a sequentially higher employee was being displaced from his regular job classification. The earlier grievance dealt principally with the question of work load and the right of the Company to have two jobs performed by one employee. The Grievant's essential complaint in the present case is that she was demoted from her Carton Machine Operator job on September 6, 1960 and placed as a Janitress in the Labor Pool. For a considerable period of time after that date until the Company installed a new combined job entitled "Sawyer Salvage" an employee with less salvage sequence service performed this Carton Machine Operator work. It is evident that on or about September of 1960 there was less carton work to be performed due to the increase in coil product and a consequent decline in the need for cartons. This decrease in the work did directly result in the Company's decision to demote the Grievant. As far as she personally was concerned, there was a force reduction that lead to her being removed from her classification. Certainly her higher sequential service would be meaningless unless it would lead to greater job retention protection. It is the Company's statement that after September of 1960 the number of cartons to be produced varied on a turn-to-turn basis, but that the work rarely exceeded one or two hours per turn. There is also an indication that the change of product mix to more coils resulted in less work for the Saw Operators because when "processing coils the only work involved as far as the Saw Operator is concerned is to provide a circular cover for the coil product". (Co. Brief p. 10).

There can be no question that the Company has a right to assign employees to work in classifications paying a lesser rate of compensation under Article VI, Section 3. The issue in this case, however, is whether in a situation where work is to be performed on a regular basis for the indefinite future whether the Company can assign the work of a classification to an employee with lesser sequential seniority while displacing the regular incumbent of that job. In this particular case, one of the principal considerations was the Company's desire to have cartons produced on all three turns because Bundlers were working on all turns. It is noted that prior to September of 1960 there were two Carton Machine Operators on the 7--3 shift here involved. During that earlier period there were no Operators on the 11--7 shift and only one Carton Machine Operator on the 3--11 shift. An examination of Arbitration Awards 262 and 369 show in those cases that the opinions refer to only "occasional tasks" and "occasional and irregular" needs for particular work. In the present case the work was required on almost every turn and could not be considered "occasional" and "irregular".

In the present case no claim was made with reference to an alleged inadequate work force. Where the Company had need for both Saw and Carton Machine work to be performed on a regular basis for the indefinite future extending over three shifts, then the Company should have exercised its discretion to establish a new job classification as it did subsequently on September 11, 1961. In the Matter of Calumet Steel Division this Arbitrator stated:

> "There is no language in any Section of Article VI that would 'alter or modify' the sequential seniority of the Grievants. It is true that the Grievants exercised their contractual right under Section 6(b) to waive a promotion to the Operator Classification. Certain specified penalties did result from this waiver. The Grievants, however, did not lose their sequential seniority relative to the employees who were placed in the higher classification. The language of Section 6(b) cannot be construed as a forfeiture of these important and valuable seniority rights. Before a forfeiture can be found, it must be expressed in clear and concise language. The Grievants are not, in this case, challenging the 'future higher sequential standing of those who have stepped ahead.' They are, however, asserting their sequential seniority rights. A reading of Section 6(b) in its entirety shows that the words 'future higher sequential standing' refers solely to promotions and deals with the rights of an employee who waives a promotion to a 'higher' sequential standing. It does not deal with the matter of sequential seniority. In both Section 6(b) and Section 8(b) it is clear from an analysis of the purposes of the provisions that the Parties were in each case referring to 'the higher standing on the jobs above'. If the Parties had actually intended to have a waiver of a promotion result in a forfeiture of sequential seniority they would have found clear and unambiguous language to express such an intention and put the employees on notice."

The Company took the position that even if there were just one hour of saw work and seven hours of carton machine work the Company, nevertheless, would assign the employee with lesser sequential seniority to perform the work of both jobs and would have demoted the Grievant. In its first step answer the Company stated:

> "It is initially pointed out that Y. Toth waived the occupation of Saw Operator; therefore, employees with lesser sequential dates are established ahead of Y. Toth on the basis of sequential standing in

accordance with the provisions of Article VII, Section 4 of the Collective Bargaining Agreement. Secondly, as a result of the product change, allocation of tin plate to coil form in place of sheet form (with the installation and commencement of operations on the new #3 Tin Line), the volume of work formerly required of the Saw Operator and Carton Machine Operator is substantially reduced, eliminating the need for a two-man crew on the 8-4 turn."

This Grievant had requested a demotion from the Saw Operator job which was tantamount to a waiver. At the time of the installation of the new combined job on September 11, 1961, she continued to be in the position of having waived a promotion. It is noted that Article VII, Section 6 is entitled "Waiver of Promotions" and is not simply limited to the waiving of promotion to a particular job. There is no reference to a "job" in this provision. The contractual provision, however, does refer to a "job level".

The important consideration, however, in this case is that the Company had no way of knowing whether the Grievant was interested in the new combined job. She had expressly waived promotion because of her desire to avoid "shift work". She did not file a grievance within the required lime limit after the new job was installed on September 11, 1961. This Arbitrator is not permitted to award speculative damages, i.e., there is no way of speculating or determining the Grievant's frame of mind on September 11, 1961, as to whether she at that time desired to be promoted to the new combined job. She clearly had waived promotion, however, to a higher job level, i.e., the Saw Operator job. Her reasons for waiving promotions are not considered in Paragraph 151. There is no basis for a finding that she is now entitled to be returned to her "old job position", i.e., Carton Machine Operator. The record does not show that any grievance was filed subsequent to the installation of the new combined job on September 11, 1961. The Company did not show that it would be administratively impractical to assign the Grievant from the Labor Pool to carton work on a part-time basis between the periods of September 6, 1960 and September 11, 1961. The evidence is that during this period there was at least one hour of carton work. The Company should compensate the Grievant at the difference in earnings between her Labor Pool job and the Carton Machine Operator job to the extent of one (1) hour per day for every day she was working in the Plant during said period.

AWARD

As per the above findings.

Peter M. Kelliher

Dated at Chicago, Illinois
this 27 day of June 1962.