Clifton

In the Matter of Arbitration Between:

INLAND STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, Local Union 1010

ARBITRATION AWARD NO. 510
Grievance Nos. 21-G-33, 34, 35, 36, 39, 40, 41, 42, 61, 62, 63, 64, and 69. et al
Appeal Nos. 555, 556, 557, 558, 596, 597, 598, 599, 632, 633, 634, 635, and 638. et al

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. W. A. Dillon, Assistant Superintendent, Labor Relations
Mr. R. A. Ayres, Assistant Superintendent, Labor Relations
Mr. Ross Elson, Supervisor, Chemical Department
Mr. Bob Bley, Assistant Superintendent, Chemical Department
Mr. L. R. Mitchell, Divisional Supervisor, Labor Relations
Mr. T. Granach, Divisional Supervisor, Labor Relations

For the Union:

Mr. Cecil Clifton, International Representative
Mr. Al Garza, Chairman, Grievance Committee
Mr. Bill Bennett, Secretary, Grievance Committee
Mr. John Wiseman, Griever
Mr. Glen Ross, Assistant Griever
Mr. Bruno Buter, Witness
Mr. Ted Rogus, Witness

STATEMENT

Pursuant to proper notice a hearing was held in GARY, INDIANA, on September 26, 1962.

THE ISSUE

Grievance No. 21-G-33 reads:

> "On the 11:30 to 7:30 turn, December 10, 1960, the aggrieved employee, S. Thiel, #24070, contends that he should have been promoted to Miscellaneous Iron and Steel Chemist."

The relief sought reads:

> "Aggrieved employee be paid all moneys lost and be promoted in future."

The Company's Answer reads:

> "On the turn in question no vacancy existed in the Miscellaneous Iron and Steel Chemist occupation. W. Marshall, 24106, after the schedule was posted, was notified to report for work as a Miscellaneous Iron and Steel Chemist for his fifth day of work after it was determined that there would be additional work available. The grievant, S. Thiel, 24070, was scheduled and worked as a Combustion Chemist and there is no basis for further compensating him. The request of the grievance and the alleged violation of the Collective Bargaining Agreement are denied."

At the hearing the Parties indicated that an Award in this matter would dispose of all of the Grievances listed.

DISCUSSION AND DECISION

The employees in this sequence were sharing the work on a four-day basis during the period in question. It is the Union's position that when the Company found it necessary to have a Miscellaneous Iron and Steel Chemist (top job in the sequence) work on Saturday, December 10, 1960, the Company should have assigned this job to Mr. Thiel, who was on the turn, and then upgraded other employees in the sequence and filled in by calling in Mr. Marshall for the bottom job. It is the Company's position that Mr. Marshall had greater sequential seniority and that when Management learned on Friday that work was required in this position on Saturday, December 10, that Mr. Marshall was entitled to perform the work of the Iron and Steel Chemist based upon his greater sequential seniority.

Article VII, Section 6 reads as follows:

> "Section 6. Filling of Vacancies and Stepbacks Within a Sequence.
> (a) Promotions. Temporary vacancies of twenty-one (21) consecutive days or less and those where no definite information as to the duration of the vacancy has been furnished to the department management by the time

schedules for the next workweek are posted, shall be filled by the employee on the turn and within the immediate supervisory group in which such vacancy occurs in accordance with the provisions of this Article, except that, where such a vacancy is on the lowest job in the sequence, it may be filled by the employee in the labor pool group (including available employees in single job sequences) most conveniently available in accordance with their seniority standing and except that such vacancies due to vacations may be filled in accordance with sequential standing where the superintendent of the department and the grievance committeeman so agreed under the 1954 Collective Bargaining Agreement between the parties, and except that where an indefinite absence of an employee exists for twenty-one (21) days and is still indefinite, the vacancy shall be filled in accordance with sequential standing beginning with the first workweek schedule posted following the twenty-first (21st) day of such absences. Temporary vacancies which are known to extend twenty-two (22) consecutive days or more shall be filled by the employee within the sequence who is entitled to the vacancy under the provisions of this Article."

A reading of the above contractual provision would appear to indicate that the Parties did define temporary vacancies. The above-stated provision must be read in context with Paragraphs 147 and 148 which define permanent vacancies. Paragraph 146 indicates that there are certain types of temporary vacancies. Some temporary vacancies may be known to extend twenty-two consecutive days, or more, and some are of a duration of twenty-one consecutive days or less. Some temporary vacancies occur in situations where the duration is known such as in the case of vacations. For certain types of temporary vacancies the Parties clearly provided that "the vacancy shall be filled in accordance with sequential standing". In the present case the vacancy was for a period of "21 consecutive days or less" and the Parties did not so provide. The employees were normally working a four-day week during this period and from the record it would appear that the order which gave rise to the need for an employee in this classification on December 10, was for a definite period. The first sentence of Section 6(a) broadly defines "temporary" vacancies and does not list all the reasons that may give rise to the variety of temporary vacancies that occur. It is noted that under Article VI, Section 8, that a special provision exists for a situation where an employee has been scheduled and then is absent. This provision is not applicable in the present case because no employee had been originally scheduled for this job on December 10, 1960. This was not a change in schedule in accordance with Article VI, Section 1, because the requirements of Paragraph 92

were not met. Article VII, Section 6 (a) is a specific provision and it is a generally understood maxim of Contract interpretation that specific provisions govern over general provisions. Reading this provision in its entirety, it does indicate that the Parties were fully aware of the varying situations that could develop that would require the filling of vacancies. Where they desired positions to be filled in accordance with sequential standing, they clearly provided this. In the case, however, of temporary vacancies of less than 21 consecutive days, it is specified that they should be filled "by the employee on the turn". Mr. Marshall was simply not "on the turn".

This Arbitrator cannot find that the Union took an inconsistent position in Grievance No. 21-G-46. In that particular case the issue involved "sequential employees versus non-sequential employees". The Union did not specifically request that the sequential employee should be moved into the job where the vacancy occurred. It is the Union's claim that its only request was that the employee called out fill the bottom job in the sequence. The fact that the Company followed its policy in paying the Grievant does not have the effect of changing the original grievance request.

The Arbitrator here rests his decision in a large part on the evidence of a fairly consistent past practice to upgrade and fill in on the bottom in this particular sequence over a period of twenty years. Employees in this sequence testified that they frequently had been upgraded on the turn. This occurred when a fifth day was added. The Company's reference to three situations where the employee was assigned to the vacancy in accordance with sequential seniority, rather than the bottom job, cover only a period approximately three months prior to the incident giving rise to this grievance. These limited number of situations in a recent brief period prior to the incident must be contrasted with the fairly general practice existing for possibly a twenty-year period. This Award is limited to the situation herein described of employees generally working a four-day week wherein the employee who is called in is given an opportunity to work a fifth day. It would appear in such case that the employees on the turn would be in the position of simply obtaining a higher rate, while the employee who was called in, although receiving a lower rate than he regularly received, would be obtaining an additional day's work beyond the four days worked by the other employees who were on the turn. During reduced operations, employees usually are anxious to get in a fifth day even if it means working at a rate below the rate of their regular occupation. Both Mr. Marshall and Mr. Thiel were Combustion Chemists and no claim was made here that the employees on the turn were not qualified to perform the available work.

AWARD

The grievance is sustained.

Peter M. Kelliher

Peter M. Kelliher

Dated at Chicago, Illinois,

this 24 day of October 1962.