In the Matter of Arbitration Between

ARBITRATION AWARD NO. 520

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

Grievance No. 22-G-61
Appeal No. 569

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

H. Cummins, Supervisor, Industrial Engineering Department.
W. Price, Attorney.
L. Davidson, Superintendent, Industrial Engineering Department.
A. Kroner, Superintendent, No. 3 Open Hearth Department.
L. Lee, Industrial Engineer, Industrial Engineering Department.
J. Stanton, Assistant Superintendent, Labor Relations Department

For the Union:

Cecil Clifton, International Representative.
Joseph Gyurko, Grievance Committeeman.
Howard Dodrill, Witness.
Frank Waszczynski, Witness.
Matthew Lewandowski, Witness.
Walter Serbon, Witness.
William E. Bennett, Acting Chairman, Grievance Committee.

STATEMENT

Pursuant to notice, a hearing was held in Miller, Indiana, on November 21, 1962.

THE ISSUE

The grievance reads:

> "The Union contends that wage payment, rate file #85-0351, which was put into effect Sunday, Nov. 20, 1960, is a violation of the Agreement.
>
> The Agreement does not provide for an experimental rate such as #85-0351. If the old incentive rate is inappropriate then management has the right to install a new incentive plan in compliance with the Agreement".

The relief sought.

> "The Union request that management pay the furnace crews on #42 fee under plan, File #85-4137 Revision #1 for all hours worked, also for all earnings lost them, while management paid them under rate file #85-0351".

DISCUSSION AND DECISION

It is one of the Union's essential requests under the above grievance that Management pay the Furnace Crews under file No. 85-4137, Revision No. 1. This Wage Incentive Plan, however, by its clear terms is not applicable to the feeding of oxygen above 40,000 cubic feet per hour. If it were to be so applied, it is anticipated that the heat times would be shorter on feeding above 40,000 cubic feet per hour and there would be greater tonnage produced per hour and the substantially greater earnings would not be related to the change in work load. On the basis of many prior arbitration awards and the general understanding in the field of wage incentives, a plan is not applicable where conditions are substantially different than those predicated under the plan.

The experimental or interim rate set forth under Wage Payment Rate No. 85-0351 is not an incentive rate that can be set only in compliance with the procedures set forth in Article V, Section 5. It is not related to output or performance of work. During the time work is being performed under this interim rate, earnings do not fluctuate as they would under a true incentive plan.

The Union's alternative request is that Management install a new incentive plan. While the Union urges that such a new incentive plan could be projected on the basis of data accumulated in studies of feeds of 40,000 cubic feet or less, it did not offer any evidence as to how this practically could be done. It is well understood that where new equipment and methods are involved that it is necessary to have a period of time in which to gather information in order to develop a sound incentive plan. The record would indicate that experience in feeding above 40,000 cubic feet per hour had not been consistent enough to develop rates because the operating conditions had not been standardized. The language of Article V, Section 5, certainly does not impose a contractual duty upon the Company to install incentive rates under any and all circumstances. Under the language used the Company must do so only where it is "practicable" and when an employee's,"efforts can readily be measured in relation to the overall productivity". The Parties granted a "right" to the Company under both Paragraphs 52 and 53 to install incentives. It did not place an unlimited and unconditional "duty" on the Company to do so. This does not mean, however, that the Company can arbitrarily and capriciously refuse to install wage incentive plans even where it is demonstrably "practicable" to do so. Interim rates are recognized under the language of Article V, Section 1 (Paragraph 31) as a form of fixed hourly payment. The existence of these rates as having been applied before a new incentive is installed was recognized in supplemental Award No. 151. The evidence does show that numerous interim or fixed hourly rates are presently in effect in this Plant.

This Arbitrator does not, however, consider any alleged local working condition or even the concept of broad past practice in interpreting ambiguous language to be of any material significance in this case. The Union by the grievance charges that the application of the interim rate was "a violation of the Agreement". The Contract here does give recognition to the concept of interim rates. If this rate which is in the nature of an average earnings rate were not applied, the only other contractual alternative under the evidence here existing, would be the appli-

cation of the lower standard hourly wage rate. This Arbitrator recognizes that the Union fear that a fixed hourly wage rate in this case might continue for many years has some possible basis. Certainly if the Company were consistently feeding above, for example, 80,000 cubic feet per hour and conditions had been standardized to the point where it would be practicable to install an incentive rate, then the Company should be required to do so. It is recommended that if this situation does occur, then the Union should file a grievance at that time. The Company should then be prepared to show that it is not practicable to install incentive rates. The question as to whether incentive rates must be applied retroactively for feeding above 40,000 cubic feet per hour is not presently before this Arbitrator.

AWARD

The grievance is denied.

Peter M. Kelliher
Arbitrator

Dated at Chicago, Illinois,
this 7 day of January, 1963.