In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 526

Grievance No. 16-G-149
Appeal No. 666

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. W. A. Dillon, Assistant Superintendent, Labor Relations
Mr. R. J. Stanton, Assistant Superintendent, Labor Relations
Mr. L. E. Davidson, Superintendent, Industrial Engineering Dept.
Mr. J. Borbely, Divisional Supervisor, Labor Relations
Mr. W. M. Weichsel, General Foreman, Coil Pickler, No. 1 and No. 2 Cold Strip
Mr. K. H. Hohhof, Supervisor, Flat Products, Industrial Engineering Department
Mr. R. McCoy, Turn Foreman No. 1 and No. 2 Cold Strip

For the Union:

Mr. Cecil Clifton, International Representative
Mr. Theodore Rogus, Grievance Committeeman
Mr. William E. Bennett, Secretary, Grievance Committee

STATEMENT

Pursuant to proper notice a hearing was held in GARY, INDIANA, on December 14, 1962.

THE ISSUE

The grievance reads:

"Aggrieved Employees of Continuous Pickling Sequence allege a violation of Collective Bargaining Agreement when Management has deleted a long-standing method of compensating aggrieved for starting up operations."

The relief sought reads:

"Reinstitute the established practice of compensating employees for start-up operations."

DISCUSSION AND DECISION

The essential question here is whether these incentive employees were properly compensated. It is necessary for the Arbitrator, therefore, to examine Article V entitled "WAGES". Section 3 of said Article provides:

> "Each employee while compensated under an incentive plan shall receive for the applicable single or multiple number of eight (8) hour turns, the highest of the following:
>
> (a) The total earnings under such plan.
> (b) The total amount computed by multiplying the hours worked by the existing fixed occupational hourly rate, if any, or
> (c) The total amount computed by multiplying the hours worked by the applicable Standard Hourly Base Rate."

This contractual language provides in this particular case that these employees shall be paid their "total earnings under such plan". Attention is, therefore, directed to the applicable plan. In this particular case there has been a plan in effect since 1952 and the employees are presumed to know the terms of this plan. The important provision here reads:

> "Add to the individual's incentive earnings, the unavoidable delays exceeding 30 minutes each multiplied by base rate minus incentive base, and the number of hours worked multiplied by the incentive base to obtain the individual's total earnings for the turn." (Co. Ex. A).

The Grievants are here contending that they are entitled to be paid for unavoidable delays <u>not</u> exceeding thirty minutes. The above quoted language of the plan by necessary implication excludes such a payment. The Grievants here are actually claiming that there is a local condition that employees are to be paid at the base rate for a start-up whether or not the delay exceeds thirty minutes. There would be simply no purpose in having the above-quoted language incorporated in the Wage Incentive Plan if all start-ups were to be paid regardless of their duration.

The Grievance in effect is asking that the plan be considered as though amended. Section 4 of Article V, however, provides that incentive plans "shall remain in effect for the life of this Agreement,

except as changed by mutual agreement or pursuant to the provisions of Section 5 of this Article." There certainly has been no mutual agreement to change this plan and the procedures of Section 5, Article V, have not been followed. By specifying the only two methods for changing the plan, the Parties have ruled out any third method such as a local condition which essentially involves a misapplication of the plan.

Arbitrator Cole in Arbitration No. 238 correctly recognizes that a local condition should not be upheld if it is inconsistent with the "basic purpose or approach of another contractual provision". If the Grievants' position were to be upheld in this matter, it would have a long-range unstabilizing effect on the very important incentive provisions of this Contract. It would mean that errors and misapplications "either way" would be given precedence over the expressed language of the Contract and in effect a third method of modifying the incentive plans would be established in derogation of the clear language of the Contract establishing only two procedures for changing an incentive plan. This would mean that if a plan were misapplied and the employees were not fully compensated in accordance with the plan, that the Company would also have a right to urge a local condition supporting its misapplication. Even in the absence of such express contractual language as here appears, Arbitrators do hold that errors in misapplication are to be corrected. This discussion assumes that there was an error. It is noted, however, that most start-ups take from 15 to 20 minutes and the Foreman is then required to make a determination as to whether the start-up actually took less than thirty minutes. The Foreman has three lines to watch. The thirty-minute delay allowance has been paid only where the employee asserts on his delay ticket that the delay actually took above .50. It is the Clerk who fills in the delay section on the lower left-hand side of the "PRODUCTION AND EARNINGS REPORT".

The Union is here claiming that there is a "start-up allowance" base rate payment of thirty minutes regardless of the delay time. The evidence, however, (Co. Ex D) shows clearly that such payment is not automatically made. There are numerous instances of start-ups without any payment being made. It cannot be said that there is an "as such" payment unrelated to actual delay time. The Union did refer to this misapplication as being a "method" as such term is used under Article V, Section 4. It must be noted, however, that the Parties were there referring to "methods *** under said plans". There is no such method here under the specific language of this plan. This would be a method beyond and outside the plan. The uncontroverted testimony is that by the use of this term "method" the Parties had in mind its relationship to a pay period basis, a group or individual basis, a per ton basis, etc.

To uphold the Union's position in this case would result in an amendment not only to the plan, but to the contractual language by, in effect, giving sanction to a third procedure for changing incentive plans which would be clearly inconsistent with Article V.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

4th day of February 1963.