

In the Matter of Arbitration Between:

ARBITRATION AWARD NO. 533

INLAND STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, Local Union No. 1010

Grievance No. 14-G-56
Appeal No. 823

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. W. A. Dillon, Superintendent, Labor Relations Department
Mr. J. Kiser, General Foreman 44-76" Slab Yard Department
Mr. P. Buda, Industrial Engineer, Industrial Engineering
Department
Mr. T. R. Tikalsky, Assistant Superintendent, Labor Relations
Department

For the Union:

Mr. Cecil Clifton, International Representative
Mr. Manuel Fernandez, Griever
Mr. Al Garza, Chairman, Grievance Committee

STATEMENT

Pursuant to proper notice a hearing was held in GARY, INDIANA,
on April 2, 1963.

THE ISSUE

The grievance reads:

"Aggrieved, H. Martinex, Check No. 9861, contends he
was denied promotion to scarfer job."

The relief sought reads:

"To be placed on the job as established man and to
be paid all moneys lost."

DISCUSSION AND DECISION

Effective March 1, 1961, Mr. W. Crowther was promoted to fill a
permanent Scarfer vacancy. He was junior to the Grievant, Mr. H.
Martinez. Both employees had previously filled permanent vacancies

on Scarfer jobs. At the time of the permanent promotion here in question, both of the employees were performing general labor work. During the period from May 1960 to March 1961, they were both promoted intermittently to temporary Scarfer vacancies. As Arbitrator Cole has stated in Arbitration Award No. 372:

"Thus, while 'ability to perform the work' is all that is called for in Paragraph 131, when there are two applicants for the open job the relative abilities of the two must be compared."

The Arbitrator is here required to compare the "relative abilities" of Mr. Martinez and Mr. Crowther. The contractual test is "the ability to perform the work". In order to determine this, an evaluation must be made of how, in fact, the two employees did "perform the work" during the period when they were both filling temporary vacancies. The Union states in its brief:

"As long as an employee is earning incentive earnings in line with the expected earnings at the time the incentive plan was instituted is the proper criteria in this respect." (Page 3).

The expected performance at the time of the installation of this incentive plan on May 3, 1960, was \$11.33 incentive over base. The Grievant has never been able to average this expected earnings during any representative period. While it is true that variables do exist in incentive earnings based upon product mix, availability of steel, quality of steel, and the availability of the Crane, these conditions should be substantially similar during a particular turn. It is noted that the Grievant during all the months considered from October 1960 to March of 1961 averaged substantially below the other employees working on his turn. He was consistently below the lowest Scarfers on his turn throughout this period. Both the Grievant and the "younger employee" had considerable experience in the past as Scarfers. Considering that a reasonable period would be necessary to "re-acustom" the Grievant, even after such a period he failed to come substantially close to the average of the other employees on his turn. (Co. Ex. E). During the fourth quarter of 1960, his average incentive earnings over base rate were \$4.06 while the incentive average over base rate of all the other employees on Scarfing in the 44-76" Slab Yard was \$7.57. During the first quarter of 1961, his average was \$7.95, while the average incentive earnings over base rate for the entire department was \$10.93.

There is no question that subsequent to the date when this permanent vacancy was filled that the Grievant did improve his work performance. This Arbitrator, however, is permitted only to examine the factual situation that existed on or about March 1, 1961, when the Company was required to make its determination as to which employee


was to be promoted. In this particular case the primary basis for the Company's determination was the ability to perform the work using incentive earnings only as a reflection of work performance.

If the Grievant's performance before March 1, 1961, had been approximately what his performance was according to the Union records from July of 1962 to December 31, 1962, this Arbitrator would be inclined to find that the abilities of the employees were substantially equal. The fact that the Grievant had filled a permanent Scarfer job prior to Award No. 167 cannot be controlling in this case where records exist as to the work performance of the employees during a representative period immediately prior to the filling of the permanent vacancy.

As this Arbitrator has stated in Arbitration Award No. 352, the test is whether there is a "substantial difference" in the factor of "Ability to Perform the Work" between the two employees. The record here does indicate that even giving consideration to any variables that might exist, there is a very "substantial difference" in this case.

AWARD

The grievance is denied.


Peter M. Kelliher

Dated at Chicago, Illinois

this 18 day of April 1963.