

In the Matter of Arbitration Between:

INLAND STEEL COMPANY,
-and-
UNITED STEELWORKERS OF AMERICA,
Local Union 1010.

ARBITRATION AWARD NO. 546
Grievance No. 10-G-92
Appeal No. 904

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. W. A. Dillon, Superintendent, Labor Relations Department
Mr. R. H. Ayres, Assistant Superintendent, Labor Relations
Department
Dr. H. G. Gardiner, Medical Director, Inland Steel Company
Mr. T. C. Granack, Divisional Supervisor
Mr. G. R. Haller, General Foreman, No. 1 Blooming Mill
Mr. M. S. Riffle, Divisional Supervisor

For the Union:

Mr. P. Calacci, International Representative
Mr. A. Garza, Chairman, Grievance Committee
Mr. W. Bennett, Secretary, Grievance Committee
Mr. F. Guinn, Grievance Committeeman
Mr. J. Hussey, Grievant
Dr. A. A. Jahns, Orthopedist

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana on
May 16, 1963.

THE ISSUE

The Grievance reads:

"The aggrieved, J. Hussey, #1839, contends the company is unjustly denying him the right to work his regular occupation of Finisher in the 19" Mill Rolling Sequence. He reported to the clinic on August 9, 1961, for a complete physical examination and had statements from two doctors attesting to his physical ability to perform his regular occupation. However, the company continues to restrict him to work below his regular occupation.

The Relief Sought reads:

"Aggrieved be placed back on his regular occupation and be reimbursed all monies lost as a result of the company's action retroactive to 8-9-61."

DISCUSSION AND DECISION

The Grievant injured his knee getting out of a car in November of 1959. Mr. Hussey then underwent surgery because of a torn medial meniscus of the left knee on November 17, 1959. The surgeon, Dr. Jahns, states that he was released for regular activity on January 10, 1960, (Union Ex. 2). He received a final examination by Dr. Jahns on April 18, 1960, (Union Ex. 1). He was examined at the Company's Clinic on January 6, 1960, and Dr. Gardiner, the Medical Director, issued a restriction that he was not to perform work requiring kneeling, squatting, climbing, except stairs. When he returned to work on January 14, 1960, he was not assigned to his regular job of Mill Finisher. He did, however, work on two subordinate sequential occupations of Motor Control Operator and Transfer and Tilt Table Operator, depending upon the level of operations. He was examined by the Company Clinic on August 9, 1961. At that time he presented two statements of Dr. Jahns to the effect that he had been released and could pursue unrestricted activity. The Company Medical Director, however, at that time reaffirmed his restriction. Dr. Shafer, a certified Orthopedic Surgeon, examined the Grievant at the Company's request on January 3, 1962, and based upon his findings, the Company's Medical Director continued the medical restriction. On April 30, 1963, the Grievant was again examined by Dr. Gardiner and the restriction was removed so that he could return to his regular occupation.

Dr. Jahns, who is a certified Orthopedic Surgeon, testified that he was unable to observe any instability in the left knee at the time of his final examination of the Grievant on April 18, 1960. When all of the work was described to him that the Company believed to be beyond the restriction, Dr. Jahns testified that Mr. Hussey could have done this work within six to eight weeks following surgery. It was his opinion that if the Grievant's knee was stable before the accident and because the operation was successful, that the Grievant's left knee was stable again even before the new cartilage had fully grown. It was his opinion also that this new cartilage would be present within one year and that he knew of no case where the cartilage would not fully develop within such period of time. He indicated that the formation of the new cartilage was the result of "stress and time".

The evidence is that the Grievant was fully advised by his General Foreman of the nature of the restriction. In the occupation that he was then performing, however, he was required to assist in roll changes about 30 per cent of the time. The job descriptions of Mill Finisher and Motor Control Operator contemplate that these employees assist the Roller on roll changes. The Mill Finisher, however, spends more time on roll changes. The weight of the evidence is that it would be difficult for the Grievant working as a Motor Control Operator on roll changes to strictly observe the stated restriction. The Grievant testified that he did do restricted work involving kneeling, and bending. He was required to stand on a guide 2 inches wide to reach the head screw. He agrees, however, that he did not climb up on top of the Mill Housings.

Dr. Gardiner testified that he called the Grievant in for an examination on April 30, 1963, because he knew that he was serious with reference to proceeding to arbitration on this matter. Dr. Gardiner believed that it would be valuable to have a recent examination. The Grievant, according to Dr. Gardiner then explained to him that he had not been following the restrictions. The Doctor believed there had been a reasonable trial period and that he was no longer able to demonstrate by tests a lack of stability. The Grievant was returned to his regular occupation and could do the full range of duties if necessary.

The Arbitrator must conclude from a detailed examination of the evidence that both Dr. Jahns and Dr. Gardiner hold the opinion that recovery sufficient to perform the job duties from this type of an injury following the removal of a medial semilunar cartilage is possible. It appears that Dr. Gardiner in finally releasing the Grievant after his examination of April 30, 1963, took into account the Grievant's claim that he had been doing the full job duties. Dr. Jahns was of the opinion that the development of a new cartilage was the result of "stress and time". The Grievant at all times from and after the filing of the Grievance on August 22, 1961, was asserting that not only in the opinion of his doctors, but in his own opinion based upon his activity that he was fully recovered. It is noted in Dr. Shafer's letter of January 8, 1962 (Co. Ex. A) that Mr. Hussey there stated that he could "do everything". It is evident that Dr. Gardiner in his examination of April 30, 1963, did not find any significant instability in the Grievant's left knee as Dr. Shafer had found on January 8, 1962.

This Arbitrator is fully cognizant of the fact that if a handicapped employee were assigned to a job that he lacked physical fitness to perform he could cause injury to himself as well as to other employees. During this period of 3½ years following the operation and particularly during the period from and after January 8, 1962, the Company should have undertaken at least an annual examination of the Grievant to determine whether with usage and the passage of time the Grievant's left knee had again become stable. This should not have depended upon the approaching arbitration hearing. The Grievant was suffering a severe loss of earnings because of this demotion during this period. The testimony of Dr. Jahns was not controverted that with "time and stress" there is a development of a new cartilage. Dr. Gardiner referred to the cartilage as in effect representing a shim to the joint.

AWARD

Because the Company should have examined the Grievant within one (1) year after the last examination of Dr. Shafer on or before January 8th, 1963, the Grievant is entitled to loss of earnings retroactive to said date.


PETER M. KELLIHER

Dated at Chicago, Illinois
this 14 day of June, 1963.