In the Matter of Arbitration Between:

INLAND STEEL COMPANY
-and-
UNITED STEELWORKERS OF AMERICA
Local Union 64

ARBITRATION AWARD NO. 547
Grievance No. 248
Appeal No. 1115

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. Robert H. Ayres, Assistant Superintendent
Labor Relations Department
Mr. William A. Dillon, Superintendent
Labor Relations Department
Mr. George Ziegler, Manager, Chicago Heights Works
Mr. Lester Barkley, Administrative Supervisor
Labor Relations Department
Mr. Thomas C. Granack, Divisional Supervisor
Labor Relations Department

For the Union:

Mr. Fred Gardner, International Representative
Mr. Nick R. Biel, Chairman, Grievance Committee
Mr. Mehrle Seely, Aggrieved
Mr. James Houk, Secretary, Grievance Committee
Mr. Chester Bartusiewicz, Aggrieved

STATEMENT

Pursuant to proper notice, a hearing was held in Hazelcrest, Illinois on June 5th, 1963.

THE ISSUE

Both parties agreed upon the following statement of the issue:

> "Whether or not Grievance No. 248 was filed within the time limits specified in Article VIII, Section 3 paragraph 300 of the Chicago Heights Supplement to the January 4, 1960 Collective Bargaining Agreement."

The Grievance reads:

> "The aggrieved employees state that they have not been paid their base rate on the half hour worked before mill start up. When this was brought to the attention

of G. R. Ziegler, Works Manager of Inland Steel Company, Chicago Heights Works, Mr. Ziegler stated that he would look into this problem. On January 17, 1962, Mr. Ziegler sent a letter stating that he recognized the fact that the aggrieved employees were not being properly compensated, and that the shortage would be paid them. But, Mr. Ziegler also stated that the Company had made an error, in that they had been pyramiding overtime for the aggrieved employees.

The aggrieved feel that Article V, Section 4, Paragraph 51 and they quote:

> 'All incentive plans used in computing incentive earnings (including all rates, methods, bases, standards, guides and guaranteed minimums under said plans) which were in effect on the date hereof and not then the subject of a timely grievance under the agreement between the parties of August 5, 1956, as amended, or subject to being made the subject of a timely grievance under the provisions of said agreement, as amended, 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.'

is most pertinent, as is Article VI, Section 2."

The Relief Sought reads:

"That the above mentioned Articles and Sections be upheld and that they receive all moneys lost by the Company's action, from September 3, 1960, to the final disposition of this grievance".

DISCUSSION AND DECISION

It is the Company's basic contention that the Grievants' claim is not arbitrable and that the Arbitrator lacks jurisdiction because such claim was not filed within the specified time limits. It is the Union's contention that the grievance was filed within the specified time limits because it involves a continuing grievance subject and was within the 30-day time limit.

The controlling contractual provision reads:

> "Except as otherwise specifically provided in this Agreement, grievances shall be presented promptly and in all events must be filed in writing within thirty (30) calendar days from the date the cause of the grievance occurs, or within thirty (30) calendar days from the time the employee should have known of the occurrence of the event upon which the grievance is based."

Whether the matter here be considered in terms of when "the cause of the grievance occurred " or the "occurrence of the event upon which the grievance is based", each daily payment of a contractually improper wage rate generally constitutes an occurrence. Arbitration Awards do make a distinction between a single completed transaction and continuing or recurring situations. In the matter of Canadian Timkin Division it is evident there that the Board of Arbitration found there was no change in the production standards since they were made permanent and that no complaint was made by the Grievors within 30-days after the standards became permanent. The Parties were there concerned with a specific grievance procedure relating to the protesting of standards.

In the excellant volume "HOW ARBITRATION WORKS" by Elkouri and Elkouri (BNA Revised Edition) the authors state:

> "Numerous arbitrators have held that 'continuing' violations of the agreement (as opposed to a single, isolated and completed transaction) give rise to 'continuing' grievance in the sense that the act complained of may be said to be repeated from day to day -- each day there is a new 'occurrence'; these arbitrators have permitted the filing of such grievances at any time, this not being deemed a violation of the specific time limits stated in the agreement (although any back pay ordinarily runs only from the date of filing.) For example, where the agreement provided for filing 'within ten working days of the occurrence,' it was held that where employees were erroneously denied work each day lost was to be considered a new 'occurrence' and that a grievance presented within ten working days of any such day lost would be timely."

It is noted that the trend of recent arbitration holdings continues as set forth in the above quoted language. See U. S. Potash Co., (37 LA 442); ACF Industries (38 LA 14); Alox Corp. (38 LA 786); and Sears, Roebuck & Co., Inc. (39 LA 567).

In Inland Arbitration No. 135, Arbitrator Blair stated the positions of the Parties as follows:

> "The Company maintains that since the facts on which the grievance is based occurred long before the thirty day time limit shown in Article 8, Section 3, the grievance is automatically barred under the grievance procedure."

He then made the following findings:

> "The issue in this case is limited to the question of whether or not grievances alleging changes in a job classification, based upon incidents which have occurred either under prior Agreements or more than thirty days before the filing of the

written grievance, are subject to appeal under the grievance procedure set forth in Article 8, and particularly Section 3 of this Article. Careful consideration of Article 5, Section 6 and particularly Part F, when considered in the light of the Wage Inequity Agreements and other parts of the Agreement show conclusively that the grievances involved in this case are of the nature of continuing violations or trespasses of the wage provision set forth in Article 5 of the Agreement. The Union grievances must therefore, be sustained."

The hearing in Arbitration No. 135 was held on August 23, 1955. No showing has been made that a change was negotiated in the language with reference to the timeliness for the filing of the grievance subsequent to Arbitrator Blair's Award.

The Award of this present Arbitrator simply represents a finding that based upon the limited evidence produced in this record that occurrences in terms of possibly improper wage payments took place within 30 calendar days before this grievance was filed on February 28, 1962. This Arbitrator was not authorized by the statement of the issue to make any definite ruling as to whether in fact any violation of Article V, Section 4 occurred. This case is to be distinguished from this Arbitrator's prior Award in Arbitration No. 387 where a single and completed act occurred in terms of discipline issued to an employee. It is noted also that in the Republic Steel Corporation Case cited by the Company, (Company Ex. O) the occurrence there involved a single act.

AWARD

Grievance No. 248 was filed within the time limits specified in Article VIII, Section 3, paragraph 300 of the Chicago Heights Supplement to the January 4, 1960 Collective Bargaining Agreement.

Peter M. Kelliher

PETER M. KELLIHER

Dated at Chicago, Illinois

this 17 day of July, 1963.