In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 554

Grievance No. 6-G-61 et al
Appeal No. 990 et al

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. Robert H. Ayres, Assistant Superintendent, Labor Relations Department
Mr. T. C. Granack, Divisional Supervisor, Labor Relations Department
Mr. A. J. Metzen, Administrative Supervisor, Power, Steam & Combustion Department
Mr. M. S. Riffle, Divisional Supervisor, Labor Relations Department

For the Union:

Mr. Peter Calacci, International Staff Representative
Mr. John Bierman, Grievance Committeeman
Mr. Al Garza, Chairman, Grievance Committee
Mr. L. Jones, Witness

STATEMENT

Pursuant to proper notice a hearing was held in Gary, Indiana, on September 18, 1963.

THE ISSUE

The issue is the disposition of the following grievance:

"The aggrieved employee, K. Hobby, #19378, Generator Oiler, #1 A.C. Station, contends that the Company is in violation of the Bargaining Agreement when the Company rejected his overtime claim for 8 hours worked on Wednesday, November 15th, which was the 6th day of work of the seven consecutive day period from November 10th to November 15th, 1961."

The relief sought reads:

"The aggrieved requests he be paid all monies due him."

The above quoted grievance was the first grievance to be appealed and by the agreement of the Parties the factual situation set forth therein serves as a pilot grievance for the other above mentioned grievances. The grievances are basically the same to the extent that they relate to work on the sixth and/or seventh day across the work week. The essential question raised in all of the grievances is whether the aggrieved employees are entitled to overtime for either sixth and/or seventh days worked under the provisions of Article VI, Section 2-C(1) (d) of the January 4, 1960 Collective Bargaining Agreement.

DISCUSSION AND DECISION

The aggrieved employee in this case did work a sixth day in the seven consecutive-day period beginning November 10, 1961. In the grievance procedure the Union asserted without the Company's denial "that employees received no additional compensation for working eight or nine days in a row". (Second Step Answer). Under Article VI, Section 1-D(1) it is provided that "All employees shall be scheduled on the basis of the normal work pattern except where *** schedules deviating from the normal work pattern are established by agreement between the Company and the Grievance Committeeman of the department involved". It is further provided in Article VI, Section 2-C (1)(d):

> "Hours worked on the sixth or seventh workday of a 7-consecutive-day period during which the first five (5) days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as provided for in Subsection D of Section 1--Hours of Work; provided, however, that no overtime will be due under such circumstances unless the employee shall notify his foreman of a claim for overtime within a period of one week after such sixth or seventh day is worked; and provided further that on shift changes the 7-consecutive-day period of one hundred and sixty-eight (168) consecutive hours may become one hundred and fifty-two (152) consecutive hours depending upon the change in the shift. For the purposes of this Subsection C (1)(d) all working schedules now normally used in any department of any plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60)days' prior written notice thereof to the Company."

It is the Company's fundamental position that an exception or "exemption" does exist with reference to the days involved because the Grievants were then filling vacation vacancies on the basis of their sequential seniority. Prior to the adoption of the above quoted language with reference to sixth or seventh workdays of a seven-consecutive-day period, the Grievance Committeeman and the Superintendent of the Power and Steam Department did enter into an agreement with reference to filling vacancies due to vacations. It was stipulated that said vacancies would be filled in accordance with "sequential standing". The Company's statement of this position is fully set forth in its Step 1 Answer which was "reiterated" in the second and third steps of the grievance procedure:

> "Pursuant to the provisions of Article VII, Section 6 (a) of the Collective Bargaining Agreement, "...vacancies due to vacations may be filled in accordance with sequential standing where the superintendent of the department and the grievance committeeman so agreed under the 1954 Collective Bargaining Agreement between the parties..."
>
> Because of the mutual agreement in this department dated July 14, 1954, the Company recognizes its obligation to promote sequentially to fill vacation vacancies but denies that it is required to be penalized by paying overtime when it complies with the terms of this mutual agreement. Moreover, these schedules mutually agreed to under the provisions of Article VII, Section 6(a) of the Collective Bargaining Agreement, by their resultant application, fall within the provisions of Article VI, Section 1-D of the Collective Bargaining Agreement."

The July 14, 1954 Agreement with reference to filling vacation vacancies in accordance with sequential standing predated the language that appears in Article VI, Section 2-C (1)(d). No claim is made by the Company that an exception is written into the January 4, 1960 Agreement that in clear language provides that where a separate agreement is entered into between the Superintendent of the department and the Grievance Committeeman on filling vacation vacancies on a sequential basis that this constitutes an additional exception. The Memorandum of Agreement dated July 14, 1954 is essentially a seniority agreement. Any exceptions to a general rule must be strictly construed. It is a well understood maxim of contract interpretation that to express one thing is to exclude others. The provision in Article VI, Section 1-D (1) which sets forth an exception permitting schedules deviating from the normal work pattern where they are established by agreement there refers to the agreement

being reached between the "Company and the Grievance Committeeman of the department". Article VII, Section 6(a) clearly relates to the matter of seniority and provides there that the agreement shall be between the Grievance Committeeman and the Superintendent of the department.

The Company's claim here actually is that when the Grievance Committeeman and the Superintendent of the department on July 14, 1954 entered into that Memorandum of Agreement with reference to filling vacation schedules that somehow by inference they contemplated this as an exception to the scheduling rules. In its brief the Company urges:

> "The quid pro quo of this scheduling arrangement is Article VI, Sections 1-D(1)(c) and 2-C(1)(d), exempting the Company from across-the-payroll-week overtime liability."

It is not possible to find that "quid pro quo" existed when the present language of Article VI, Section 2-C(1)(d) had then not been adopted. The Parties in 1956 in view of the existence and continuation of the seniority vacation agreement of July 14, 1954 should have set forth an additional exception in Paragraph (d). Such an exception cannot now be found by inference.

The Company does clearly understand that "a certain remedy exists", i.e., that they could have scheduled in such a manner as to avoid overtime even if this meant that certain employees might only work four days during the week. As this Arbitrator stated in Arbitration Award No. 449:

> "Article VI, Section 1--D does state that employees shall be scheduled on the basis of a normal work week pattern except where 'such schedules regularly would require the payment of overtime'. The evidence does show that in going from a twenty-one turn to a twenty turn schedule if all employees are kept strictly on a 5--2 normal schedule, it will regularly result in the payment of overtime and/or the violation of the seniority provisions of the Contract. The only way to avoid this built-in regular overtime is to go to a non-normal schedule for a limited number of employees."

The record in the present case, however, appears to indicate that the Company knows well in advance the period of time when employees will be taking vacations. No specific denial was made of the Union's statement that the Company could have so scheduled as to avoid the sixth and seventh day of work for the Grievants.

This Arbitrator is not able to find that the Company's interpretation represents a settled interpretation between the Parties. During much of the period here involved the Parties were operating under a non-normal schedule by mutual agreement between the Company and the Grievance Committeeman of this department. During this period of time numerous employees were scheduled for a sixth day without payment of overtime for a sixth day as such. There is no evidence that situations are entirely comparable between the Blast Furnace Department and the Power and Steam Department.

Although the Parties are in conflict with reference to the fact that there was a contractually proper withdrawal of the agreement for a non-normal schedule, there can be no question that prior to the period covered by the above grievances the Parties were then on a 5--2 schedule. This "normal work pattern" of five consecutive work days "beginning on the first day of any consecutive period" did not have an exception as contended by the Company in terms of filling vacation vacancies without payment of overtime.

AWARD

The grievance is sustained.

Peter M. Kelliher

Dated at Chicago, Illinois
this 26 day of November 1963.