In the Matter of Arbitration Between:

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA,
Local Union No. 64

ARBITRATION AWARD NO. 563

Grievance No. 248
Appeal No. 1152

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. Robert H. Ayres, Assistant Superintendent, Labor Relations
Mr. Thomas C. Granack, Labor Relations Representative
Mr. George Ziegler, General Superintendent, Chicago Heights Works
Mr. Lester Barkley, Administrative Supervisor
Mr. M. G. Jacobsen, Supervisor, Industrial Engineering

For the Union:

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

STATEMENT

Pursuant to proper notice a hearing was held in HAZELCREST, ILLINOIS, on February 25, 1964.

THE ISSUE

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, 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 monies so lost by the Company's action, from September 3, 1960, to the final disposition of this grievance."

DISCUSSION AND DECISION

The evidence in this record is that a modernization program took place which was finally completed in September of 1960. The addition of considerable new equipment did require revisions in manpower and procedural changes. The testimony in this hearing, as well as in the prior hearing on the issue of the timeliness of the grievance, clearly establishes that on or about August 11, 1960, the Union was apprised of the fact that a Second Assistant Roller was to be assigned on After-Turn Roll Changes. The Union was then notified that the Company would no longer pay for this overtime work on a "compounding" or "pyramiding basis". Employees, however,

were to be guaranteed their average earnings on the new mill operation until incentives were developed. On September 5th, 1960, Supervisors were notified to discontinue the payment for this After-Turn Roll Changes on a pyramiding basis when the mill started up on September 6, 1960. The Rollers do record employees' time and they continued to make payment for this work on a pyramiding basis. On January 5, 1960, the Plant Manager sent a letter to the Rollers pointing out that they had been in error in doing this and such payments were discontinued effective January 6, 1960. The incentive plan was installed after certain revisions and made retroactive to September 2, 1961. The Arbitrator must here note that the error in the payment by pyramiding had been discontinued approximately eight months earlier.

As this Arbitrator has stated in numerous published decisions as well as in Arbitration Award No. 526, even in the absence of expressed contractual language, Arbitrators do hold that "errors in misapplication are to be corrected". Rates and all other payments set forth in various provisions are to be paid as specified by this Collective Bargaining Agreement. Certainly where an improper rate is paid under Article V, Section 1, the error is to be corrected and the employee properly compensated. The Plant Manager's testimony was not controverted that there is an everyday balancing of overages and shortages in this plant. It is to the long-range interests of both parties that errors either way be corrected. This is the only means of assuring that the bargain reached in negotiations is, in fact, carried out. The Contract itself without any expressed language with reference to the correction of errors requires that its terms be followed.

In the particular case here involved the Contract was not, in fact, correctly applied. Pyramiding is expressly negatived by Article VI, Section 2. The work here involved was performed on an overtime basis and Article VI, Section 2, specifies how this payment is to be made. Under Subparagraph C (1) (a) overtime at the rate of one and one-half (1½) times the regular rate of pay is to be paid for "hours worked in excess of eight (8) hours in a workday". Subparagraph E 1, which is entitled "Nonduplication" clearly provides that payment of overtime rates "shall not be duplicated for the same hours worked". The Union did not disagree that the payment sought here is in the nature of pyramiding. Such a payment is clearly contrary to the "basic purpose or approach" of Article VI, Section 2.

The Parties were in agreement at the hearing that the controlling contractual provision is Article V, Section 4, which reads in part as follows:

> "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".

It is the Union's claim that the pyramiding was a "method" under the incentive plan, and therefore, could not be changed. There can be no question, however, that due to the vast modernization program that a new incentive plan had to be adopted. The evidence shows that there were changes in the underlying conditions that originally gave rise to the payment on a pyramiding basis. From and after September 6, 1960, two regular Assistant Rollers were assigned to this After-Turn Roll Change work. This new incentive plan was not in effect during the period when the Company, through error, paid on a pyramiding basis. The period of these improper payments extended from September 6, 1960 to January 6, 1961. During that period the employees were working on the basis of an average earnings guarantee and when the new incentive plan was installed it was made retroactive to September 2, 1961. It is impossible to find under any theory that the pyramiding discontinued some eight months previous thereto could be "grafted" on to the incentive plan which was not made retroactive until September 2, 1961. The payment on a pyramiding basis is not set forth in the incentive plan and cannot be considered a component thereof. No mention is made in the plan of any type of payment for After-Turn Roll Changes. The overtime provisions do control with reference to the proper payment for work after eight (8) hours in a workday. As this Arbitrator pointed out in Arbitration No. 526, Article V, Section 4 refers to a method "under said plans". Pyramiding is not specified as a method under said plans. As this Arbitrator stated in Arbitration Award No. 526:

> "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."

The weight of the evidence is that the employees clearly knew that the Company had corrected the pyramiding error in January of 1961. The amount of money here involved was such that employees would be aware of it. It is the Arbitrator's recommendation here that the Company should institute an installment method of repayment where any large sums are to be paid by employees so that no individual employee will suffer a hardship.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

this 8th day of April 1964.