

In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 565

Grievance No. 10-G-101
Appeal No. 1098

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. William A. Dillon, Superintendent, Labor Relations Dept.
Mr. Robert H. Ayres, Assistant Superintendent, Labor Relations
Department
Mr. T. C. Granack, Labor Relations Representative, Labor
Relations Department
Dr. H. G. Gardiner, Medical Director
Dr. Sid John Shafer, Witness
Mr. G. R. Haller, General Foreman, Plant No. 1 Mills
Mr. E. Gaston, Wage & Salary Administration

For the Union:

Mr. Peter Calacci, International Representative
Mr. William Young, Chairman, Grievance Committee
Mr. William E. Bennett, Secretary, Grievance Committee
Mr. Fay Guinn, Grievance Committeeman
Mr. Jack Hisey, Aggrieved
Dr. Leon J. Armalavage, Witness

STATEMENT

Pursuant to proper notice a hearing was held in GARY, INDIANA,
on March 17, 1964.

THE ISSUE

The issue is the disposition of the following grievance:

"The aggrieved, J. Haisey, #1626, contends the
Company violated the C.B.A. by refusing to allow
him to work in his regular occupation of Ass't.
Roller in the 19" Mill. He reported for examina-
tion to the clinic on December 1, 1961, with
a letter from his physician stating the aggrieved
is able to perform his regular job."

The relief sought reads:

"Aggrieved be reinstated to his regular occupation and paid all earnings lost as a result of the Company's action."

DISCUSSION AND DECISION

There is no serious disagreement as to the factual background of this case. The record shows that Mr. Haisey had a football injury in 1939. He did suffer backaches during the period of about five years prior to 1960. On June 2, 1960, Dr. Armalavage performed a laminectomy and removed a ruptured intervertebral disc. Mr. Haisey's regular job had been Assistant Roller. Based on the Company's medical recommendation subsequent to the operation, he was demoted to the job of Motor Control Operator. He was required to work under specific restrictions relating to his avoiding bending, or lifting of consequence (over 25 pounds). Under the above-quoted grievance Mr. Haisey sought on December 27, 1961 to return to his regular job as Assistant Roller. On July 31, 1963, the Company arranged to have Mr. Haisey examined by an Orthopedic Surgeon, Dr. Sid John Shafer. Dr. Armalavage stated at the hearing that he was not in disagreement with Dr. Shafer's letter of August 2, 1963. That letter (Co. Ex. B) reads in part:

"HISTORY: Mr. Haisey stated that he had back surgery in 1960 for the removal of a ruptured intervertebral disc. He stated that prior to the operation he had complained of low back pain and had left sciatica. He further stated that he had intermittent low back pain for five or six years prior to the surgical procedure in 1960. Mr. Haisey stated that he did not work for three and one-half months after the operation and then returned to work as a motor control operator."

"X-RAYS: X-rays of the lumbosacral spine, dated July 31, 1963, were reviewed. These films revealed narrowing of the disc space L-5 S-1, with degenerative changes at the above mentioned site. Degenerative changes are also noted involving the lumbar vertebral bodies. The oblique films did not reveal any unusual findings. A small amount of opaque material is noted in the lumbosacral canal."

"OPINION: It is my opinion that the present work restrictions referable to Mr. Haisey's back continue to be enforced. It is entirely possible and highly probable that the patient may develop low back pain which may be chronic if he submits himself to strenuous bending and lifting. In view of the fact that degenerative changes are now

present in this obese male and a surgical procedure has been carried out about three years ago, I do not feel that the lumbosacral junction should be subjected to excessive strain." (Emphasis added.)

Neither Doctor makes any claim that the Grievant has an "unstable back". Dr. Armalavage does concede, however, that the possibility of future injury to Mr. Haisey based upon his present condition is slightly greater than to an employee who has had no back surgery. The testimony is that with his present condition there would be at least a 10 per cent permanent disability case under Workman's Compensation. Dr. Armalavage agreed that there could be a slight increase if Mr. Haisey continued to work as an Assistant Roller for a period of five years. Dr. Shafer testified that an employee who has had the back surgery and degenerative condition shown by the X-rays should limit lifting and heavy work or he would have future back complaints. This Arbitrator in Award No. 416 stated:

"The Arbitrator in this case must note, however, that the Company made no showing that it ever availed itself of the opinion of an orthopedic expert. The Company doctor's judgment as far as this record indicates, was based entirely upon an examination of the X-rays. There is no showing of any physical manipulation or test of the Grievant's right forearm. The Company did not request the Grievant's doctor nor did it attempt on its own to give the Grievant a test with reference to his climbing a ladder or using unusual stress on the right forearm. The Grievant's testimony is uncontroverted that after the automobile accident he did go out in the field and climb ladders.

This Arbitrator does believe that the medical opinion of a Company doctor should prevail in matters of this type in the absence of a showing by the Union by a clear preponderance of the evidence."

In the usual discharge case this Arbitrator holds that the Company has the burden of proof. In medical disability cases it must be noted that the Company is by law held responsible for the safety of its employees. Because of this legal duty the Company must be given a right to take reasonable steps to limit future financial liability. The paramount consideration here, however, was best expressed by the Union's Grievance Man as involving the future safety and well-being of Mr. Haisey. The record does not permit a finding that it is within reasonable predictability that the Grievant would be able to

work for two years, three years, or any specific period of time without suffering an injury to his back. The medical evidence also does not indicate that his condition particularly with reference to the degenerative changes would improve with time. This is not a case simply involving the passage of a period of time in order that there can be a complete recovery. Both Doctors Armalavage and Shafer are in agreement that Mr. Haisey in his condition presents a somewhat greater risk than an employee with a normal back. There can be no question that the Assistant Roller job does require the performance of heavy work. Employees may be involved in roll changes, pass changes, and guide changes at least three hours or more every other day. It is regrettable here that the work of the crew cannot be modified to permit the Grievant to carry on as an Assistant Roller. The Union made no claim that there was any practicable way of modifying the work. The Assistant Roller job duties are not comparable to those of the Motor Control Operator or to the work involved in an average mill occupation in the demand for physical strength and effort. The Assistant Roller is required to use a 12 pound sledge hammer, heavy bars, and must turn a heavy valve while in a sitting position. It was this last mentioned task which Dr. Armalavage believed was more hazardous to the Grievant than the use of a sledge hammer or other heavy work. The Grievant did stay within his restriction as a Motor Control Operator. The fact that he has not suffered any injury during the past three years on the Motor Control job does not show that he is able to do the work of an Assistant Roller. He has been performing this lighter work, which principally involves sitting, during the years since his operation.

It is this Arbitrator's recommendation that if the job content of the Assistant Roller occupation here is changed through mechanical improvements or automation that the Grievant then should be given consideration consistent with the facts existing at that time and the applicable contract language. The Arbitrator does sympathize with the Grievant's loss of income. The evidence, however, does show that there is a reasonable basis for the conclusion that this employee presents an unusual risk to his own future well-being if permitted to work as an Assistant Roller.

AWARD

The grievance is denied.


Peter M. Kelliher

Dated at Chicago, Illinois

this 16th day of April 1964.