INLAND STEEL COMPANY and UNITED STEELWORKERS OF AMERICA Local Union 1010	Grievance No. 18-HA-36 18-HA-37	Appeal No. 1170 1171

Award No. 582

Opinion and Award

Appearances:

For the Company:

W. Ryan, General Manager, Industrial Relations
R. H. Ayres, Superintendent, Labor Relations
J. T. Hewitt, Representative, Labor Relations
T. J. Peters, Representative, Labor Relations
G. L. Corban, Assistant Superintendent, Yard Department
Lamar Reed, Foremen, Yard Department

For the Union:

Peter Calacci, International Representative
William Bennett, Chairman, Grievance Committee
Clarence Bullock, Grievance Committeeman

These two grievances grew out of the Company's refusal to give holiday pay on May 30, 1964 to grievants, I. Rodriguez and J. Rivera, Barge and Ship Hookers in the Yard Department. The Company did so because, it contends, they were scheduled to work on Saturday, May 30, and since they failed to report for work were ineligible for the unworked holiday pay, under the provisions of Article VI, Section 2-D-(1) (Paragraph 110) of the collective bargaining Agreement then in force.

Paragraph 110 provides that an employee scheduled to work on a designated holiday loses his right to the unworked holiday pay if he fails to report for work on that holiday unless the failure to report or perform work is attributable to sickness or because of death in the immediate family or similar good cause.

The schedules of these grievants were posted for the week starting May 24, 1964, as required by Article VI, Section 1-D-(2) (Paragraph 91). They were to work the day turn (7:30 - 3:30) Monday through Friday. On Friday, May 29, shortly before the end of their turn, they were instructed to report for work on Saturday, May 30, and both responded curtly that they would not come in.

The Company insists that supervision was within its rights in changing grievants' work schedules as indicated because they had learned on Thursday, May 28, during the day turn, that certain barges had to be loaded in order to meet a sailing deadline out of New Orleans. It is Management's view that in keeping with the provisions of Paragraph 92 (Section 1-D-(3) of Article VI), it was therefore free to change schedules posted for that week, and it did undertake to schedule employees on all three turns for Saturday, May 30.

Paragraph 92 stipulates:

> "(3) Schedules may be changed by the Company at any time except where by local agreement schedules are not to be changed in the absence of mutual agreement; provided, however, that any changes made after Thursday of the week preceding the calendar week in which the changes are to be effective shall be explained at the earliest practicable time to the grievance or assistant grievance committeeman of the department involved; and provided further that, with respect to any such schedules, no changes shall be made after Thursday except for breakdowns or other matters beyond the control of the Company."

Management's position is predicated on the premise that this change in the previously posted schedule was properly made because it was caused by "matters beyond the control of the Company."

The matter beyond the control of the Company in this instance was information made known to supervision in this department on Thursday, May 28, that three additional barges were to be loaded in the week beginning May 31, 1964. Although this information was on hand during the day turn on Thursday, the employees were not informed that they would be required to work on the holiday on Saturday until close to the end of their turn on the following day, Friday. The proposed schedule changes were not explained "at the earliest practicable time" to the grievance committeeman of the department; in fact, not discussed at all. Another employee on the same turn as the two grievants who reported off by telephone was excused; and it was suggested at the hearing by Company witnesses that if the grievants had telephoned in before their shift started on Saturday morning they would also probably not have been denied their holiday pay.

Serious question exists therefore whether information concerning the loading of the three additional barges not made known to the supervisors in the Yard Department until early Thursday afternoon really constituted the kind of matter beyond the control of the Company, as contemplated by Paragraph 92, where this type of reason is coupled with breakdowns. No evidence was offered to show the effect of the two grievants' refusal to report, and of the absence of another employee who was excused at the last moment. Apparently, when it became known on Thursday that the barges were to be loaded no steps were taken to notify or alert the employees of this fact, although Saturday was Decoration Day and generally the work week of these employees was Monday through Friday. Nor was any attention paid to the stipulation of Paragraph 92 that such schedule changes "shall be explained at the earliest practicable time to the grievance or assistant grievance committeeman of the department involved."

Factually, the finding is warranted, in light of the circumstances mentioned, that the proposed schedule change was not due to "breakdowns or other matters beyond the control of the Company."

This does not mean that the Company is forbidden to make schedule changes in the manner or for the reasons set forth in the Agreement. This right has been recognized in several prior awards.

Schedule changes not made in accordance with contract provisions or for the reasons stipulated in the Agreement amount to unmade changes insofar as the employees' right to holiday pay is concerned. This is the import of an award of

Arbitrator Ralph Seward (Decision No. 83 - Grievance No. 1228 - Bethlehem Steel Co.) cited by both the Company and the Union. There is then no effective change in the schedule and an employee's failure to work on the holiday does not justify the denial to him of his unworked holiday pay, as set forth in Paragraph 110 of the Agreement.

The issue does not revolve about posted or unposted schedules. That issue was laid at rest in Award No. 569. It should be noted, moreover, that Award No. 569 holds that a schedule may be changed by agreement or acquiescence of the employee, even if he is under no duty to work the proposed added turn, and such a turn is thereupon treated as a scheduled turn. But a flat refusal to work the added turn would certainly be the precise opposite of acquiescence, and the proposed change in schedule would then be effective only if made for the reasons and in the manner set forth in the Agreement.

The finding upon which this holding is based is further supported by Management's expressed willingness to excuse these grievants from working on the holiday if they had telephoned this information prior to the beginning of their shift that day. This indicates that in fact the reason for this belated announcement of the change in schedule was not of the urgent nature contemplated by Paragraph 92 of the Agreement. In this case there was a lack of evidence or circumstances from which one could reasonably infer such urgency, as was the situation in Arbitration No. 495.

AWARD

This grievance is granted.

Dated: June 21, 1966

/s/ David L. Cole

David L. Cole, Permanent Arbitrator