INLAND STEEL COMPANY )
)
and )
)
UNITED STEELWORKERS OF AMERICA )
Local Union 1010

Grievance No. 16-HA-76
Appeal No. 1173
Award No. 583

Opinion and Award

Appearances:

For the Company:

Henry M. Thullen, Attorney
Robert H. Ayres, Superintendent, Labor Relations
R. J. Stanton, Assistant Superintendent, Labor Relations
E. M. Patterson, Assistant Superintendent, No. 2 Cold Strip
K. H. Hohhof, Superintendent, Industrial Engineering
J. T. Hewitt, Senior Representative, Labor Relations
E. G. Mullen, Cold Strip Mills Industrial Engineer, Industrial Engineering
M. G. Jacobson, Supervising Industrial Engineer, Flat Products, Industrial Engineering

For the Union:

Peter Calacci, International Representative
William E. Bennett, Chairman, Grievance Committee
John Bierman, Chairman, Plant Union Committee
John K. Smith, Plant Union Committee
Theodore Rogers, Grievance Committeeman
Virgil Wagner, No. 1 and 2 Cold Strip
John P. Jones, No. 1 and 2 Cold Strip
Dale A. Johnson, No. 1 and 2 Cold Strip
Joe Salady, No. 1 and 2 Cold Strip

The parties have agreed that this award will also be applied to Grievance No. 16-HA-84.

The issue is whether by installing the incentive plans for the #22, 23, and 24 Temper Mills in November, 1964 the Company violated Section 4 of Article V of the April 6, 1962 Agreement as amended June 29, 1963.

In 1948 #23 and 24 Temper Mills were relocated and changes made in them, and a new Mill called #22 was installed. The existing incentive plans were deemed inappropriate and the employees were thereafter paid the previous average hourly earnings of employees on #23 and 24 and three other mills. It was stated in writing by the Company that

> "The following average earnings will be paid in the No. 2 Cold Strip Mill for Nos. 22, 23 and 24 Temper Mills until incentive rates are established."

The crews agreed to this.

These hourly rates, as modified by negotiated general wage increases, continued until November, 1964 when the Company installed incentive plans, and this led to this grievance.

It is the Union's position that the amended 1962 Agreement which was in force in 1964 stipulated in Section 4 of Article V that

> "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 June 29, 1963 and not then the subject of a timely grievance under the Agreement between the parties of April 6, 1962, or subject to being made the subject of a timely grievance under the provisions of said Agreement, 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."

The Company, on the other hand, insists that Section 5 of Article V applies, and not Section 4. Its main point is that as of June 29, 1963 there was not in effect any incentive plan "used in computing incentive earnings" nor any rates, methods, bases, standards, guides or guaranteed minimums under said plans. It simply disputes the Union's contention that an hourly rate of pay determined by the average earnings in the three months when the incentive plan was last in effect is a method of payment or a guaranteed minimum under the incentive plan.

All parties clearly understood in 1948 that the existing incentive plans on #23 and 24 Temper Mills were being discontinued as inappropriate and that hourly rates of pay based on the average earnings on five temper mills would be paid the employees "until incentive rates are established."

It should be noted that when these temper mill incentives were installed it was explicitly stipulated that "These rates are subject to revision in the event of any change in equipment or methods affecting production." Moreover, Section 5 of Article V of the collective bargaining agreement in force in 1948 (and in essentially the same form in every agreement since then) declares that where an incentive plan becomes "inappropriate by reason of new or changed conditions resulting from mechanical improvements made by the Company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality of manufacturing standards, the Company shall have the right to install new incentives ... "

Section 5, in Paragraph 53, also gives the Company the right to install incentives when none exists when the Company finds it "practicable to do so." In fact, Section 5 declares that wherever practicable it is the policy of the Company to apply incentives.

Procedures are spelled out in the several paragraphs of Section 5 for installing incentives where they do not exist, for revising or replacing them when they become inappropriate, and for the steps to be followed to resolve disputes as to the equitability of incentive plans and the kind of compensation to be paid in the interim.

The Union concedes that in this instance the Company was free unilaterally to install new incentive plans to replace those which had become inappropriate, provided this was done during the term of the 1947 contract then in effect. It lost this right, as the Union sees it, when the next agreement came into force, because of the provision of Section 4 requiring that all incentive plans, pay methods and guaranteed minimums under such plans as of the newly specified date "shall remain in effect for the life of this Agreement, except as changed by mutual agreement or pursuant to the provisions of Section 5."

The Union does not deny the fact that if Section 5 is applicable there is no time limit specified for replacing the inappropriate incentive plan with a new or revised incentive plan.

At the arbitration hearing the parties concentrated principally on the issue whether the average hourly rates paid the crews constituted incentive plans, or pay methods or guaranteed minimums under such plans.

The prior arbitration awards submitted by the parties strongly support the Company's position that this kind of hourly pay is not a form of incentive pay, nor a method of payment under an incentive plan. See Republic Steel Co., Decision No. 87 (1956), Arbitrator Harry Platt; Northwestern Steel & Wire Co., XI BSA 8086, Arbitrator Gabriel Alexander; and Inland Steel Company, Arbitration No. 520 (1963), Arbitrator Peter M. Kelliher.

The Union relied solely on some dictum in one award, that rendered by Arbitrator Charles B. Gordy on March 15, 1954 in Inland Steel Company -- United Steelworkers, Local 1010, Arbitration No. 104 (1954). The Union stressed a quotation at page 8 in which the Arbitrator said: "The plans in effect at this time had the incentive element in them provided by the previous three months earnings under the plans suspended in April and May, 1949."

He did not say the incentive plan was in effect, nor that any rates, methods, bases, standards, guides or guaranteed minimums under said plan were in effect. He introduced the expression "incentive element," which does not appear in the collective bargaining agreement he was applying nor in the agreements with which we are concerned. Apparently, he was suggesting that the hourly rate the employees were receiving was based on average earnings under the incentive plan, which was true, but this was nevertheless an hourly rate which did not vary with the amount or quality of production and hence lacked the essential characteristic of an incentive rate.

Moreover, the arbitrator recognized this distinction, for at page 13 he stated: " ... the rates may be considered valid. If the rates are valid, they do not become inappropriate since the earnings are not affected by changing conditions of the work; and the contract grants to the Company permissive judgment as to when conditions are appropriate for the introduction of plans relating earnings to performance." Arbitrator Gordy thus appears to be more favorable to the Company view on this issue than to that of the Union.

More directly in point was my own 1964 award in Arbitration Nos. 572 - 575 as to the 44" Hot Strip Mill. Involved was the application of Paragraph 58 of Article V, Section 5. The specific question was whether the average hourly earnings payments to the employees constituted earnings received by the incumbent employees under the incentive plan. I ruled that average hourly earnings as an interim payment did not constitute earnings under the incentive plan and went back to the latest available period in which the incentive plan as such was in force to ascertain what the average earnings under the incentive plan were.

The foregoing seems sound as a matter of contract interpretation. What the Union is troubled by is the method by which the equitability of new incentives is judged, with particular reference to the workload concept. This has been the subject of numerous awards, and the Union undertook unsuccessfully to have it changed in the last contract negotiations. Whatever may be the merits of the Union's position with reference to the workload approach in the determination of

the soundness of incentive plans, it is perfectly clear that it would be improper to construe Sections 4 or 5 of Article V in a manner at variance with the meaning of provisions thereof in order to accomplish some other result which the Union frankly acknowledges it seeks. The Union remains free, of course, to challenge the incentive plan which the Company has installed in accordance with the relevant provisions of the Agreement.

AWARD

This grievance is denied.

Dated: August 19, 1966

/s/ David L. Cole
David L. Cole, Permanent Arbitrator