In the matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local 1010

Grievance No. 13-L-7
Appeal No. 1201
Award No. 607

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
Robert H. Ayres, Assistant Director, Labor Relations
R. C. Weymier, Superintendent, 76" and 44" Hot Strip Mills
T. Macey, General Labor Foreman, 76" and 44" Hot Strip Mills
G. Lundie, Director, Safety and Plant Protection
R. J. Stanton, Assistant Superintendent, Labor Relations
T. L. Kinach, Senior Labor Relations Representative
R. T. Larson, Labor Relations Representative
D. Kilburg, Industrial Relations Trainee

For the Union

Theodore J. Rogus, Staff Representative
James Stone, Acting Chairman, Grievance Committee
Gavino Galvan, Secretary, Grievance Committee
Pete Rodriguez, Grievance Committeeman 76" Hot Strip

The grievant is W. Tsilis, who is in the labor pool of the 76" Hot Strip Mill Department. His complaint is that in the posted schedule for the week of January 9, 1972 he was to work four 7 - 3 turns, Tuesday, January 11, through Friday, January 14, but on Wednesday, January 12, he was notified that his Friday turn was canceled.

The Union maintains that by changing grievant's posted schedule the Company violated several provisions of the collective bargaining agreement, principally Article 10, Section 1, but also Article 13, Sections 1 - 5.

The major arguments in the parties' pre-hearing briefs and at the

hearing were over the meaning and application of Article 10, Section 1 which relates to scheduling, although as stated above the Union also made general reference at the hearing to the seniority provisions of Article 13.

The request in the grievance is that the "Company cease and desist this type of action and pay all monies lost to the aggrieved."

The work schedule for the week of January 9 was posted as required on Thursday, January 6, 1972. A fatal accident occurred on Friday, January 7, on the Streine Shear Unit, which had to be disassembled. A State Safety and Health Inspector recommended that certain modifications be made while the unit was being rebuilt. This caused the Company to call out a number of employees on Sunday, January 9, and Monday, January 10, to perform this work, adding to it other repair or maintenance work that would normally have been done later that week. The grievant was one of the employees called out, and he worked on the 7 - 3 turn on Sunday, January 9, and on both the 7 - 3 and 3 - 11 turns on Monday. The Company then canceled his Friday turn.

Section 1-d-(2) of Article 10 of the Agreement stipulates that employees' work days shall be posted by Thursday of the preceding week. Section 1-d-(3), Paragraph 10/7, provides:

> "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."

The Company's position is that the changes made in grievant's schedule were "for breakdowns or other matters beyond the control of the Company."

The Union disputes this, urging that the emergency due to the accident of January 7 did not affect the work for which the Company was prompted to schedule grievant on Friday, January 14, that other employees in the labor pool worked that day including some with less seniority than grievant, and that this violated grievant's rights under Article 13, which contains the seniority provisions of the Agreement.

The parties cited and discussed more than a dozen awards issued in

other cases, many of them at other steel companies. Not all of them are in point. The facts or even the contract provision relied upon may be different, or there may be some local practice that has an influence on the decision. As I cautioned in Arbitration No. 491:

> "In reading the decision in a given case one must be careful not to extend its effects indiscriminately. The significance of the point made in relation to the facts involved must not be overlooked."

Applying this test, it seems to me that a careful examination of the cited awards will reveal that in material respects they are strikingly consistent. The ruling I am making in the instant case is in line with the relevant reasoning and holdings in the cited awards to the extent that the facts and controlling contract provisions are similar.

The first observation to be made is that the right to overtime work as such is not one which is supported by the seniority provisions of the parties' collective bargaining agreement. This was discussed, with citations of other Inland cases, at length in Arbitration No. 585, and that reasoning still holds and need not be repeated.

The parties argued at our hearing over the make-whole of relief in situations where the Company violates the Agreement. Both the Union and the Company cited my award in Arbitration No. 424. In that award it was made clear that non-compliance with a contractual provision will entitle the injured party to be made whole for the loss caused thereby unless the agreement stipulates a special or lesser penalty in specified circumstances. This proposition is as true today as it applies to the case we are considering, just as it did to the grievance ruled upon in Arbitration No. 424 in 1961.

Coming to the facts in the instant grievance, when the grievant's schedule was posted he was informed he would have four turns in the labor pool including the 7 - 3 turn on Friday, January 14. It was expected that there would be repair and maintenance work to be done on that turn. The accident which occurred on Friday, January 7, after the schedule was posted necessitated the immediate dismantling of a major piece of equipment, the Streine Shear, and its rebuilding. While having this done, the Company decided to have repair and maintenance work performed on this unit which but for the accident would have been performed later that week, including Friday.

Surely, these unanticipated events constituted "breakdowns or other matters beyond the control of the Company," to use the words of Paragraph 10,7. Grievant and other employees were called out to work unscheduled turns on Saturday and Sunday, January 8 and 9.

What the Company did was to change or revise grievant's schedule for the week after it was posted, not only by cancelling his turn on Friday,

January 14, but by adding three turns on the preceding Sunday and Monday. Instead of having four turns as scheduled he actually had six turns, one at premium rates. He nevertheless complains in this grievance that he was improperly off on January 14 because his schedule for that week was changed. At the hearing the basis of this complaint was enlarged to include a violation of his seniority rights because some unnamed employees with less seniority worked that day in the labor pool.

In view of the reference above to the unanticipated and uncontrollable nature of the events causing these schedule changes, it must be clear that the Company was not in violation of Paragraph 10.7 cited above.

This must not be taken to mean that the Company is free in the absence of breakdowns or other matters beyond its control to change posted schedules at will. As several of the cited awards indicate, the Company is unquestionably free to set up work schedules in accordance with the provisions of Article 10, Section 1 in such a way as to avoid the payment of overtime, but after they are posted the Company is under obligation to observe the restrictions of Paragraph 10.7.

On the other hand, if it fails to do so it does not follow that it must pay an employee who loses a turn as though he had worked. This is because Section 1-d-(4) (Paragraph 10.8) stipulates that if the schedule is changed contrary to the provisions of Paragraph 10.7, an employee who is laid off on any day within the five scheduled days and is required to work on what would otherwise have been the sixth or seventh workday in the schedule,

> "shall be paid for such sixth or seventh day worked at overtime rates in accordance with Article 11 - Overtime and Holidays."

This constitutes a contractual stipulation of a special or lesser penalty than the make-whole measurement which would otherwise have been due grievant as advocated by the Union. Not only was this pointed out in Award No. 424, but arbitrators serving in other steel company - union relationships have ruled precisely the same.

AWARD

This grievance is denied.

Dated: April 10, 1973

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed	February 25, 1972
Step 3 appeal	March 1, 1972
Step 3 hearing	March 8 and 15, 1972
Step 3 minutes	April 4, 1972
Step 4 appeal	April 18, 1972
Step 4 hearing	June 13, 1972 July 20, 1972 November 1 and 21, 1972 December 6, 1972
Step 4 minutes	January 5, 1973
Appealed to arbitration	January 10, 1973
Arbitration hearing date	March 20, 1973