In the Matter of Arbitration

Between	)	
	)	Grievance Nos. 9-L-86, 9-L-87,
Inland Steel Company	)	9-L-88, and 9-L-89
	)	Appeal No. 1216
and	)	Award No. 617
	)	
United Steelworkers of America, Local 1010	)	
	)	

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
W. P. Boehler, Senior Labor Relations Representative
R. H. Ayres, Manager, Labor Relations, General Offices
P. E. Shattuck, Superintendent, 10" and 14" Merchant Mills
L. E. Davidson, Manager, Production Control
T. J. Mulligan, Superintendent, Power and Fuels
R. J. Stanton, Assistant Superintendent, Labor Relations
T. L. Kinach, Senior Labor Relations Representative

For the Union

Theodore J. Rogus, Staff Representative
William E. Bennett, Chairman, Grievance Committee
John Hurley, Vice Chairman, Grievance Committee
Billy Mitchell, Chairman, Incentive Committee
Clifford Scott, Assistant Griever

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The grievance in this case involves the effect of a revision by the Company of a schedule it had previously posted. As presented by the Union, the issue is whether the Company was obligated to pay overtime for Friday, May 17, 1974 when it changed the schedule as posted. The contract provision involved is Article 10, Section 1.

While we shall discuss Grievance No. 9-L-87, the parties agree that the considerations and award will apply equally to the other three grievances listed above.

On Wednesday, May 8, 1974 the Company posted schedules for the work-

week starting Sunday, May 12 for the 10" and 14" Merchant Mills. As posted, there was to be a six-day schedule, Monday through Saturday, with Sunday, May 12, off. On Friday, May 10, the Company revised the production schedules, making Sunday, May 12, a work day, but Monday, May 13, a day off, with the balance of the original schedule unchanged.

It made this change because of the desire to conserve fuel by making more efficient use of coke oven gas. Such gas is produced in the coking process, and it is used, among other places, in the Merchant Mills. After the usual superintendents' conference on Wednesday, May 8, the schedule for the week of May 12 was posted. On Friday, May 10, however, the Fuel Department reminded the Manager of Production Control that in the two preceding weeks it had been necessary on Sundays to bleed and waste such gas. It was thereupon decided, in view of the general fuel shortage situation, to operate the Merchant Mills on Sunday to make use of this gas, and the schedule change mentioned above was made.

The Union contends that this did not constitute a breakdown or a matter beyond the control of the Company, as specified in Article 10, Section 1, d, (3). It urges, therefore, that the following paragraph, 1, d, (4) came into play requiring the Company to pay overtime rates as though Monday, May 13, were a day worked.

Similar claims have been the subject of consideration and decision in a number of arbitration awards in the steel industry. The Union cites several in which such claims were allowed, notably at Republic Steel, Bethlehem Steel, and Eastern Stainless Steel Corp. The Company cites several in which such claims were disallowed at Jones & Laughlin Steel, United States Steel, and Armco Steel. The Company also cited some awards at Inland in which reference was made to awards at other steel companies.

The first question is whether in fact the revision of the posted schedule was for reasons beyond the control of the Company. This question has been passed on several times, at Inland and elsewhere. It is sufficient to point out that the facts causing the Company to change the schedule were known before the May 12 schedule was posted. While one can appreciate the Company's desire and need to conserve fuel, and cannot charge management with being capricious, it is nevertheless true that the change in the schedule was not caused by matters that arose or became known after the schedule was posted and hence not for reasons beyond the control of the Company within the contemplation of Section 1, d, (3).

The critical question is whether it follows that overtime rates should therefore be paid for work on Friday, May 17.

Both before and after the schedule revision Friday was the fifth day of work in this workweek. At Republic Steel the contract provisions comparable with those in the Inland contract relied upon by the Union have a basic difference. At Republic when a change is made in a posted schedule

not because of matters beyond the employer's control, and "an employee is laid off within any scheduled five days and is required to work on what would otherwise have been the sixth or seventh workday in his work-week, the day on which such employee was laid off shall be counted as a day worked..." At Inland, on the other hand, as at U. S. Steel and Jones & Laughlin, such a day is not treated for overtime purposes as a day worked, but the employee is entitled to overtime rates only if he "is required to work on what would otherwise have been the sixth or seventh workday in the schedule on which he was scheduled to commence work."

In Inland Award No. 607 (April 10, 1973) we discussed the restrictions on the Company's right to change schedules after they are posted, and then went on to point out:

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

At page 3 of Inland Award No. 495 (March 20, 1963) we pointed out that our contract provisions on this subject are different from those in the Republic Steel contract, and that consequently the Republic awards have no direct bearing on our issue.

In the Bethlehem Steel case cited by the Union (Decision No. 2227, January 31, 1974) the issue was whether the schedule change was the result of a breakdown or other conditions beyond management's control. The contract provision relating to overtime pay is of the same kind as in the Republic Steel contract, and not like the Inland provision. Once it was determined that the change was not for reasons beyond the control of management, under that contract there was no question but that the overtime rate was payable.

At U. S. Steel, however, the provision in question is like that at Inland; in fact, Inland borrowed it from the U. S. Steel contract. In Case No. USS-9263, November 6, 1972, the Board of Arbitration decided that although a schedule change was made in violation of Section 10-D-3 (comparable with our Article 10, Section 1, d, (3)):

> "The usual remedy for a violation of 10-D-3 lies in the application of Section 10-D-4. [our Article 10, Section 1, d, (4)] But none of the grievants worked on a sixth or seventh day under the originally posted schedule, so that no violation of Section 10-D-4 occurred, and there is no remedy available under this provision. In such situations, where no employee actually has worked or reported for work, it is well established that no remedial back pay may be awarded."

To the same effect was the decision of Arbitrator Clair V. Duff on June 17, 1970 in the Armco Steel award in Grievance No. A-68-59 in which he cited with approval earlier decisions at U. S. Steel, particularly the language of Board Chairman Sylvester Garrett in his September 2, 1959 Case G-114, and went on to state:

> "In U. S. Steel Case No. N-344, decided by the present Arbitrator on February 26, 1962, the U. S. Steel Board reaffirmed its previous holding that even if the Company violates Section 10-D-3 in changing an employee's schedule, the penalty provided in Section 10-D-4 is not applicable where the Grievant was not scheduled to work on what otherwise would have been the sixth or seventh day of his original schedule. These prior arbitration decisions illustrate a well established construction of language, which is identical to the wording of Paragraphs 10.43 and 10.44. This interpretation has survived many contract negotiations and has not been reversed. Under these circumstances, we are convinced that the parties intended that the meaning established by prior cases should remain unchanged throughout the steel industry."

These observations apply with equal force to the contract provisions in question in the Inland contract, since it is undisputed that they were deliberately made the same as their counterparts in the United States Steel contract.

As indicated, the provisions on this subject in the Jones & Laughlin Steel contract are of the same kind as those in the Inland, U. S. Steel, and Armco agreements. On July 12, 1951 in an award in Docket #199-C-47 a ruling was made, together with comments in explanation, entirely con-

sistent with the interpretation made of similar provisions in the U. S. Steel and Armco cases referred to above.

Without unduly belaboring the point, it should be emphasized, as it was in Award Nos. 491 and 495, that in citing prior awards one must be careful to note whether the contract provisions and the facts are similar, and not to extend and apply their effect indiscriminately.

AWARD

This grievance is denied.

Dated: April 7, 1975

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed	June 26, 1974
Step 3 appeal	July 2, 1974
Step 3 hearing	October 2, 1974
Step 3 minutes	October 30, 1974
Step 4 appeal	November 6, 1974
Step 4 hearing	December 10, 1974
Step 4 minutes	January 24, 1975
Arbitration appeal	February 3, 1975
Arbitration hearing	March 20, 1975
Date of Award	April 7, 1975