In the Matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America, Local 1010

Grievance No. 21-L-47
Appeal No. 1214
Award No. 618

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
W. P. Doehler, Senior Labor Relations Representative
R. H. Ayres, Manager, Labor Relations, General Offices
J. L. Federoff, Assistant Superintendent, Labor Relations
S. Kyriakides, Supervising Metallurgist - Inspection, Metallurgical

For the Union

Theodore J. Rogus, Staff Representative
William E. Bennett, Chairman, Grievance Committee
Don Lutes, Grievance Committeeman
John Hurley, Vice Chairman, Grievance Committee
Alan Mosely, Assistant Grievance Committeeman

- - - - -

As clarified at the hearing and in the parties' written summations, the question to be decided is whether the Company violated Article 2, Section 3; Article 3, Section 1; and Article 13, Sections 1, 3, 4, 5 and 6 of the collective bargaining agreement by scheduling a Laborer from the 10" Mill Department to perform overtime work on the Billet Wrencher occupation in the Conditioning Dock Sequence, Metallurgical Department on the 4-12 turn on October 2, 1972 rather than calling out Grievant to perform this work, since Grievant has seniority in this sequence.

Grievant was scheduled for five turns that week, and the turn in question would have been overtime work. The 10" Mill Laborer to whom the temporary vacancy was assigned performed it as overtime work. The Union contends Grievant was available at home and should have been called out to fill this vacancy.

The Company relies on statements contained in Award Nos. 585 and 607. The Union relies on Award No. 515. Both maintain that there is support for their position in practices followed in the plant.

In none of these prior awards was there a clear ruling on an issue in which the facts were the same as in the instant case. Essentially, each party relies on dictum or implications it finds in these awards.

Award No. 515 was issued by Arbitrator Peter Kelliher on January 17, 1963. The ruling was that an employee with sequential seniority was entitled to a fifth day in the workweek in preference to assigning work in the sequence to non-sequential employees. It was held that the fact that this fifth day would happen to be at overtime made no difference since for the non-sequential employee it was also overtime (his sixth day). In a clarification issued on December 6, 1963, Arbitrator Kelliher stated that since the Company could apparently not avoid overtime, the work should have been assigned to the employee with sequential seniority.

The other two cited awards were made by me. Award No. 585 is the more important one. It was issued November 25, 1966. The contest there was not between employees with sequential seniority as against employees without such seniority. The work involved was labor pool work in No. 3 Open Hearth. Instead of doubling over Laborers in No. 3 Open Hearth, who were then on a six-turn schedule, the Company assigned this labor pool work to Laborers from the No. 2 Open Hearth. Neither group had sequential seniority. I ruled that Award No. 515 protected employees with seniority up to five turns per week and that this was so because of department seniority as well as sequential seniority. But by way of dictum I added that the collective bargaining agreement does not provide for the assignment of overtime on the basis of seniority.

In Award No. 607, decided April 10, 1973, the issue related to a change in the posted schedule. In the course of finding that the Company had not violated Article 10, Section 1 (d) I stated that the contract does not require the Company to give an employee with sequential seniority an overtime turn if overtime can be avoided, but this was dictum since it was not essential to the ruling.

As stated at the hearing, I did not intend by my Award 585 to reverse Arbitrator Kelliher's ruling in Award 515. The questions seemed to be different, and it is inaccurate to maintain that I overruled Award 515. The issues were not the same.

Each party pointed to instances in which grievances were granted or withdrawn on the issue over the assignment of overtime work to employees with sequential seniority in preference to non-sequential employees. Each claimed that the instances it cited supported its position.

The practice has not always been consistent when judged by the way grievances have been disposed of. Some have been granted in part at least for the purpose of helping to clear the backlog. Some have been withdrawn in a spirit of cooperation under what was referred to as a rule of reason, meaning that if Management had not made the given assignment a unit might have had to be shut down, or production interfered with in some other way. In any event, many of these dispositions were made on the basis they were without prejudice, and I feel it important to honor this understanding. The parties have made excellent progress in grievance handling and in the development of good labor relations, and it is highly desirable that we be careful not to do anything to impair this progress.

When I decided Case No. 585 I was not given all the evidence and arguments presented in the instant case on the manner in which overtime work has been assigned. Obviously, the large percentage of employees in this plant who are of the craftsman or skilled type have the benefit of overtime work within their sequences because others lack the necessary qualifications. Moreover, it has not been disputed that many employees file applications to work in specified sequences on the basis of the overtime available in such sequences.

In truth, the difference between the parties is not as wide as it appeared to be initially. The Union agrees that the Company is free to use non-sequential employees if it can avoid overtime by doing so. The Company acknowledges that in the Metallurgical Department, in which the Conditioning Dock Sequence is located, the practice has been to give employees with sequential seniority the preference to overtime work when overtime is unavoidable.

Here a sequential employee was not called out for sequential work at overtime but it was assigned to an employee without sequential seniority to perform as overtime work. In light of the prevailing practice, and despite my dictum in Award 585, this constituted a violation of the established rights of this Grievant as an employee with sequential seniority.

The Company in effect conceded that in this department when overtime work is involved and when it cannot be avoided, sequential seniority governs the assignment. The Union stated, on the other hand, that the Company is free under the agreement to avoid incurring overtime pay if it can do so.

It seems necessary and desirable that this issue be cleared up. What was said by Arbitrator Kelliher in Award 515 and by me in 585 has led to misunderstandings between the parties that must be resolved. I believe the ruling indicated in the preceding paragraphs with respect to this grievance will be a helpful step toward the resolution of these misunderstandings.

AWARD

Grievant, A. Moseley, is entitled to be compensated for the pay he would have earned had he been called out to work on the 4-12 turn on October 2, 1972.

Dated: April 21, 1975

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed	November 22, 1972
Step 3 appeal	December 1, 1972
Step 3 hearing	September 5, 1973 September 19, 1973
Step 3 minutes	October 17, 1973
Step 4 appeal	October 23, 1973
Step 4 hearing	November 27, 1974
Step 4 minutes	December 16, 1974
Arbitration appeal	January 2, 1975
Arbitration hearing	March 20, 1975
Date of Award	April 21, 1975

DAVID L. COLE
45 CHURCH STREET
PATERSON, N. J. 07505

June 19, 1975

Mr. Theodore J. Rogus
International Staff Representative
United Steelworkers of America, Local 1010
3629 Euclid Avenue
East Chicago, Indiana 46312

Mr. Leroy R. Mitchell
Superintendent, Labor Relations
Inland Steel Company
Indiana Harbor Works
3210 Watling Street
East Chicago, Indiana 46312

Re: Award No. 618, Grievance No. 21-L-47

Gentlemen:

Under date of May 23 you addressed a joint letter to me concerning a disagreement between you as to the scope of the above decision.

My ruling in Award No. 618 was that Grievant was entitled to be compensated for the pay he would have earned had he been called out to work on the 4-12 turn on October 2, 1972.

My reasons for doing so were stated in my opinion, primarily that in this department the prevailing practice has been to give employees with sequential seniority the preference to overtime work when overtime is unavoidable.

This ruling applies to the Metallurgical Department and not only to the Conditioning Dock Sequence.

In any similar situation - i.e., any other department in which there has been such a practice - this ruling would also apply.

If parties disagree as to whether some other situation is similar this disagreement should be resolved through the grievance procedure, including arbitration if necessary. If by agreement or decision it is determined that the material facts or circumstances are similar to those which led to Award No. 618, then the ruling in Award No. 618 would automatically apply. If on the other hand it is determined such facts or circumstances are not present in the situation in question, Award No. 618 would not automatically apply.

This clarification is not to be taken as a ruling that there may not be other facts or circumstances in some other department which may lead to a result similar to that in Award No. 618, but it should be clear that in such a situation Award No. 618 is not automatically applicable. This award was based on the facts prevailing in the Metallurgical Department, as found in that arbitration proceeding.

If there is anything further upon which you would like clarification, please let me hear from you.

Sincerely yours,

David L. Cole

David L. Cole
Permanent Arbitrator