In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010

Grievance No. 10-M-36
Appeal No. 1247
Award No. 647

## INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 20, 1978.

## APPEARANCES

For the Company:

Mr. W. P. Boehler, Arbitration Coordinator, Labor Relations

Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations

Mr. T. L. Kinach, Senior Labor Relations Representative

Mr. R. A. Senour, Superintendent, Plant No. 1 Mills

Mr. B. Brown, Superintendent, 12" Mill

Mr. D. Popa, Mechanical Foreman, 24" Bar Mill

Mr. E. Rippe, General Foreman, 24" Bar Mill

Mr. W. C. Wingenroth, Assistant Superintendent, Labor Relations

Mr. R. T. Larson, Senior Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Jim Robinson, Grievance Committeeman

Mr. John C. Porter, Grievance Committeeman

Mr. Arthur R. Mata, Assistant Griever

Mr. Jessie Jones, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

On November 3, 1975, the rolling turn (day turn) at the 24" Bar Mill, Plant No. 1 Mills Department, was scheduled to work from 8:00 A.M. to 4:00 P.M. At approximately 9:30 A.M. the charging cylinder on the No. 2 furnace ceased to function because of a mechanical failure. A charging cylinder activates pushing devices on a charging table causing cold billets to be charged into the furnace for heating prior to rolling. When the furnace is full, every billet charged into the furnace will cause a heated billet to be discharged from the furnace. The Mechanical Foreman was informed that the ram would neither extend nor retract and he thereupon composed a six-man mechanical crew to make needed repairs. The Mechanical Foreman was aware that a spare charging cylinder was available and the crew was directed to remove the malfunctioning cylinder and replace it with the spare cylinder. The foreman estimated that the removal and replacement could be completed by approximately 1:00 P.M., some three hours before the start of the afternoon turn. The replacement work was completed by 1:00 P.M., and the cylinder was activated. The ram extended, permitting billets to be charged into the furnace, but it would

not retract and it would have been impossible to charge additional billets into the furnace with the ram in the extended position.

The Mechanical Foreman immediately attempted to correct the problem. He attempted several mechanical procedures, none of which were successful, and he concluded at approximately 3:30 P.M. that the cylinder would have to be removed and the piston rings replaced. If rings were not immediately available, they would have to be fabricated. He then proceeded to follow that procedure. The cylinder was removed, repairs were made, piston rings were fabricated and installed, and the cylinder was placed back into operation at approximately midnight.

Operating supervision had been kept informed of progress and the developing problems during the course of the day. No attempt had been made to communicate with afternoon-turn employees since the Company anticipated (on the basis of the Mechanical Foreman's time projections) that the spare cylinder could be installed and become operative by 1:00 P.M. When operating supervision learned of the problems with the second cylinder, they were assured at that time that the mechanical problems appeared to be minor and correctible in ample time to permit the afternoon turn to start at 4:00 P.M. When operating supervisors were informed at 3:30 P.M. that the cylinder would have to be removed for major repairs, they concluded that the afternoon rolling turn would have to be canceled since they did not want to operate for a full turn with just one furnace in operation because of the nature of the product being produced on that turn. Approximately 69 employees reported for work and were sent home.

A grievance was filed contending that the 4:00 P.M. to midnight crew was entitled to be compensated for four hours of "show up time." The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

## DISCUSSION

The provisions of the Agreement cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 10

"HOURS OF WORK

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10.14 "SECTION 4. Whenever an employee has been scheduled or notified to report for work and upon his arrival at the plant finds no work available in the occupation for which he was scheduled or notified to report, unless the Company has notified him at the place he has designated for that purpose not less than two (2) hours before his scheduled starting time, he shall be paid for four (4) hours at his pay period average straight-time earnings rate on the occupation for which he was scheduled or notified to report. If he is offered other work for which he is physically fit, for four (4) hours or more with earnings for the same effort at least equal to his pay period average straight-time earnings on the occupation for which he was scheduled or notified to report and he refuses such work, he shall not be eligible to receive the four (4) hours' reporting pay above provided for.

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10.16 "The purpose of this Section is to compensate employees for faulty scheduling and the Company shall not be liable for reporting pay hereunder when the failure to supply work is due to the employee, or to a strike, stoppage of work in connection with a labor dispute, acts of God, or other interference with the Company's operations beyond the control of the Company. In addition, the Company shall

not be liable for reporting pay under this Section when the failure to supply work is due to a power or equipment failure which occurs within five (5) hours of an employee's designated starting time but shall be liable for such pay when the failure to supply work is due to a power or equipment failure, and such failure occurs more than five (5) hours prior to an employee's starting time unless the Company has attempted to notify him not to report at the telephone number he has designated for that purpose not less than two (2) hours before his scheduled starting time."

It should be noted that the portion of reference paragraph 10.16 beginning with the words "In addition, the Company shall not be liable..." is unique and different from corresponding language appearing in most basic steel agreements. That portion of Article 10, Section 4, was negotiated between the parties in 1958 and has appeared in all Collective Bargaining Agreements thereafter without change. The parties have been successful in resolving all differences arising out of the interpretation and application of that provision of the Agreement for a period of approximately twenty years before the instant grievance arose and was ultimately appealed to arbitration.

The basic facts are not in dispute. The Union contended that only one breakdown occurred at approximately 9:30 A.M. and much more than five hours elapsed between the period of the initial breakdown at 9:30 A.M. and the commencement of the start of the afternoon shift at 4:00 P.M. It was the contention of the Union that the Company had available the hours between 9:30 A.M. and a period of shortly before 2:00 P.M. within which to make its decision, exercise its judgment and either call the employees and advise them not to report for work or permit them to report for work and become liable for providing them with four hours of work or the reporting pay. The Union contended that the Company had exercised poor judgment when it decided to put in a replacement

cylinder which had been removed from another similar unit several weeks prior thereto, without attempting to check and test the unit before its installation in order to determine whether it would or would not operate. The Union further contended that all the reporting employees could have commenced work by utilizing the one operating unit and one furnace and that operations would not have been impeded if one furnace had been used for a period of at least four hours during the course of the afternoon shift. The Union contended that the decision made by the Company concerning the period of time when the unit would be placed into operation turned out to be erroneous, but it cannot be considered to be "circumstances beyond the control" of the Company.

The Company contended that it had fully and completely complied with the provisions of Article 10, Section 4, of the Collective Bargaining Agreement. The Company contended that it did everying in its power to attempt to correct the mechanical problem that had developed in order that it could provide the reporting employees with work and to generate needed production. The Company contended that everything that occurred on the morning in question was related and could not be separable. The Company contended that it made a reasonable and good-faith judgment when its mechanical employees and supervision concluded that the charging cylinder on the No. 2 furnace could not be repaired and would have to be removed for a major overhaul. The Company contended that a spare charging cylinder was available and members of supervision had every reason to believe that the replacement cylinder would be operable and could be installed in time for the commencement of afternoon shift operations.

The Company contended that the spare cylinder had been removed (several weeks prior thereto) because its actions had been sluggish, but that it was in good condition at the time of removal and was expected to function in a satisfactory manner until the malfunctioning cylinder could be completely overhauled and restored to operating condition. The Company contended that it had never operated one furnace for more than four hours and that the type of material in the furnace would have made it dangerous to operate with one furnace because of the possibility of serious damage to equipment.

The Company contended that it made a series of judgment decisions, all of which were reasonable in the light of information available to the Company at the time that its decisions were made, and the events which occurred were beyond the control of the Company. The Company contended that when the replacement cylinder was installed at approximately 1:00 P.M. and did not function properly, it had every reason to believe that the mechanical problems were minor in nature and could be quickly resolved. The Company contended that when it finally became aware at 3:30 P.M. that the replacement cylinder also required major repairs, it was too late to attempt to call any of the employees scheduled to report at 4:00 P.M. The Company contended that it needed all of the production that it could get from the mill and, since it had lost more than a full turn of production, the Company was required to add rolling turns to the schedule on the following Saturday in order to complete the production planned for that week.

The Company contended that it was impossible to run a preliminary test on the replacement cylinder before its installation since testing stands

were not available. The Company contended that the cylinder in question is one of a type that has operated for many years and is relatively trouble-free so that a cylinder can operate for a number of years before a complete overhaul becomes necessary.

The arbitrator must find that, although a breakdown occurred at 9:30 A.M., the Company exercised reasonable judgment when it concluded that the cylinder could either be repaired or replaced in more than ample time to permit operations to be resumed prior to the start of the shift at 4:00 P.M. The preliminary cause for the cancellation of the turn was the failure of the replacement cylinder to operate and it was the equipment failure of the replacement cylinder that became the primary cause for the ultimate cancellation of the turn.

When the replacement cylinder was installed at 1:00 P.M. and began to malfunction, the Company was required to make preliminary determinations in order to reach a decision with respect to whether the cylinder could or could not be repaired in time to place calls to the employees who were scheduled to report at 4:00 P.M. The reasonable judgment exercised by the Company's mechanics and members of supervision was that the cylinder could be repaired and a major overhaul would not be necessary. That judgment was based upon the type of malfunction and the fact that the cylinder had operated at the time that it was removed several weeks prior to the day in question because of "sluggish action." The Company exercised sound and reasonable judgment when it concluded that the spare cylinder could be installed and would be expected to function in a sufficiently satisfactory manner so as to permit operations to be resumed at

4:00 P.M. The Company could not anticipate the complete failure of the spare cylinder and the ultimate need for a major overhaul on that cylinder as well as the one that had originally failed at 9:30 A.M.

The Company had several alternatives. It could have acted in a hasty manner and have called employees earlier in the day and advised them not to report for work. That would not, however, have been the reasonable course to follow since all information available to the Company indicated that the defective cylinder could be removed and an operable cylinder installed in ample time to permit the afternoon shift to start.

Although the evidence would indicate that operations could have gone forward for a relatively short period of time with only one furnace in operation, the evidence also indicates that ten-inch channel was in the furnaces and the Company could not reasonably be expected to continue operations with one furnace with that type of material in production. It was conceded that problems could have developed on a one-furnace operation that could have caused serious and costly damage to operating equipment. The Company could not be expected to assume that risk.

There is some question with respect to whether the Company should or should not have anticipated that the replacement cylinder might be defective. The Union contended that the replacement cylinder should have been tested before installation. That contention would have considerable merit if a testing procedure was readily available and could have been performed within any reasonable period of time. The fact remains, however, that there was no testing

stand available that could have been used in that area to check out the spare cylinder and determine whether it would or would not function so that production could go forward on the afternoon shift. Since the evidence would indicate that a cylinder of that type can operate for a number of years without a major overhaul, the need for a permanent testing stand would appear to be minimal and the absence of testing equipment under these circumstances could not result in the imposition of liability to the Company when the replacement cylinder turned out to be inoperable.

The arbitrator does not believe that the facts in this case are similar to those in the cited U. S. Steel case (Case No. N-335, 1961) wherein Arbitrator Garrett referred to the fact that the Company made an assessment which "as it turned out this was a bad gamble which lost." In this case the Company did not "gamble." It made a reasonable decision consistent with judgments exercised by its mechanical people and by its supervision. It decided to remove the malfunctioning cylinder and replace it with a cylinder which had operated several weeks prior thereto on an identical furnace and which the Company had every reason to believe would continue to operate if it was installed in the place and stead of the malfunctioning cylinder until such time as a permanent repair could be made to the cylinder which had been removed after it had malfunctioned at 9:30 A.M. on the day in question. The fact that the replacement cylinder also malfunctioned could not result in imposing liability upon the Company for reporting pay.

In substance, the arbitrator must find that the Company did not, on the basis of all of the applicable facts and circumstances, violate any of the

provisions of the Collective Bargaining Agreement when it did not call the employees scheduled to report at 4:00 P.M. on November 3, 1975, and sent some 69 employees home after they had reported for work as scheduled.

For the reasons hereinabove set forth, the award will be as follows:

AWARD

Grievance No. 10-M-36
Award No. 647

The grievance is hereby denied.

Bert L. Luskin
ARBITRATOR

September 14, 1978

## CHRONOLOGY

## Grievance No. 10-M-36

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| Grievance filed (Step 3) | December 2, 1975 |
| Step 3 hearing | October 6, 1976 |
| Step 3 minutes | November 19, 1976 |
| Step 4 appeal | November 29, 1976 |
| Step 4 hearing | January 31, 1978<br>April 12, 1978 |
| Step 4 minutes | June 29, 1978 |
| Appeal to arbitration | July 5, 1978 |
| Arbitration hearing | July 20, 1978 |
| Award issued | September 14, 1978 |