

INLAND STEEL COMPANY )  
 ) Grievance No. 10-F-15  
and ) Docket No. IH 289-282-4/1/58  
 ) Arbitration No. 303  
UNITED STEELWORKERS OF AMERICA )  
Local Union No. 1010 ) Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative  
Fred Gardner, Chairman, Grievance Committee  
Joseph Wolanin, Secretary, Grievance Committee  
Wm. Bennett, Grievance Committeeman

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations  
R. J. Stanton, Assistant Superintendent, Labor Relations  
M. Riffle, Divisional Supervisor, Labor Relations

This case presents for decision the question whether Reyes, the grievant, was stepped back as Craneman on the #4 Charging Crane in the 21" Bar Mill in violation of the Agreement. Since the filing of the grievance Reyes has been repromoted into that job. Accordingly, in money terms, the relief sought is limited to the pay he would have received as Craneman on the #4 Charging Crane between the date of stepback and the date he reestablished himself in the job.

In 1937 the #4 Charging Crane was reassigned from the #1 Blooming Mill to the 24" Bar Mill without change in function or area of operation. The three men who operated the crane previously transferred with it. According to the testimony offered, Reyes was either one of these three original operators of the #4 Charging Crane, or if he was not, he promoted into the occupation shortly after its transfer into the 24" Bar Mill.

According to the Company's records, the first seniority list was published on December 12, 1947. An identical list dated March 3, 1948 submitted as an exhibit, and abbreviated for the purposes of this exposition, shows the following:

<u>Charging Car</u>	<u>Sequence Date</u>	<u>30-Ton Crane</u>	<u>Sequence Date</u>
Theodore	9-1-35	Chernek	4-22
Sposato	1-1-41	Marton	24
<u>Reyes</u>	1-1-43	Zernik	25

<u>Warehouse Crane</u>	<u>Sequence Date</u>
<u>Mattis</u> - (ex.R.C.)	6-27
<u>Elboar</u> "	6-29
* * *	
* * *	

Apparently Mattis, for some time before the posting of the lists, had been filling temporary vacancies on the 30-Ton Roll Crane and was given preference among the Warehouse Cranemen for that assignment.

The oldest "Promotional Sequence Diagram", submitted as an exhibit in the case, is dated December, 1950. This shows two boxes at the top of the Crane Sequence connected by a series of vertical lines. The top box bears the legend "Charging Car Operator #4"; the lower box, "30-Ton Roll Crane Operator". Below these connected boxes in the sequence is "Warehouse Operator". The promotional sequence diagram contains the note that appears on all forms used by the Company for sequence diagrams, namely:

"A series of vertical lines connecting grouped boxes at approximately the same level indicates advancement above the boxes so connected is dependent upon promotion through only one of them."

A similar promotional sequence diagram was issued as of August 30, 1957.

The seniority listing of Reyes and Mattis seems not to have been altered until February 15, 1957. On that list, also abbreviated for the purposes of this writing, the following appears:

<u>Charging Car</u>	<u>Sequence Date</u>	<u>Dept. Date</u>	<u>30-Ton Roll Crane</u>	<u>Sequence Date</u>	<u>Dept. Date</u>
<u>Elboar</u>	6-29	5-29	Chernek	4-22	3-21
<u>Sposato</u>	1-1-41	7-33	Marton	-24	-24
<u>Reyes</u>	1-1-43	6-33	Zernick	-25	5-25
			<u>Mattis</u>	6-27	5-25

Warehouse Craneman

\* \* \*

Thus, Mattis who was Elboar's senior on the Warehouse Crane, became the fourth man in the job on the lower of the connected boxes on the promotional sequence diagram; Elboar, his junior filled a vacancy resulting from the departure of Theodore and went to the top of the three-man list for the job in the higher of the connected boxes. Reyes maintained his position as the third man on the seniority list for the #4 Charging Crane.

This order on the lists was maintained until a revised list was posted as of December 3, 1947. That list showed the following:

<u>Charging Crane</u>	<u>Sequence Date</u>	<u>Dept. Date</u>	<u>30-Ton Roll Crane</u>	<u>Sequence Date</u>	<u>Dept. Date</u>
Mattis	6-27	5-25	Chernick	4-22	3-21
Elboar	6-29	5-29	Marton	-24	-24
Sposato	1-1-41	7-33	Zernick	-25	-25

Warehouse Cranemen

Four employees who have waived promotion

Baker            6-24-33            6-33

Two other employees who have waived

Legenza            4-37            6-34  
Reyes            1-1-43            6-33

\*   \*   \*

The initial award with regard to the effect of extended operations on sequential seniority rights was in Arbitration No. 167 rendered on March 29, 1957. The Company states that only six employees, overall, were required to be carried on the seniority lists as occupying permanent jobs for the Charging Crane and the 30-Ton Roll Crane, at a 15 turn level of operations.

In making its adjustment to the several awards on extended operations the Company believed it necessary to drop one of the seven employees listed for these two occupations on the February 15, 1957 seniority list. Inasmuch as Reyes had the least senior sequence date it stepped him back to Warehouse Craneman as shown on the December 3, 1957 list and then moved Mattis over from the bottom of the 30-Ton Roll Crane list to the top of the Charging Crane list because his sequence date was earlier than that of Elboar and Sposato. It is this step back that caused Reyes to file his grievance. Subsequently, Sposato "demoted himself permanently" and Reyes was reelevated to Charging Crane Operator.

The Arbitrator is asked to make a choice between the finely balanced equities of Mattis and Reyes to fill the Charging Crane occupation for the period in question. Each is in a position to advance persuasive reasons for urging that preferential treatment be accorded to him. Each has a relatively long period in the sequence under circumstances that justify him in the belief that his own claim is a fair one and should prevail. The Arbitrator assumes that the Company has no preference as between the two employees, both having worked on the Charging Crane in the past (Mattis, on temporary assignments) and that its primary interest is in determining the rule applicable to this complicated factual pattern.

From the viewpoint of Mattis, it is said that his sequential date is considerably earlier than Reyes; that for some time before the Charging Crane was brought into the Department he was the senior man on the Warehouse Crane list and entitled to fill vacancies on the 30-Ton Roll Crane; and that the 30-Ton Roll Crane, even after the advent of the Charging Crane was considered the preferential assignment of the two. In support of the preferential aspect of that assignment the Company alluded to a series of facts including the following: a) that the three 30-Ton Roll Crane employees who had the earliest seniority dates in the sequence apparently chose to remain on their own crane when the Charging Crane was brought in; b) that three years after the first published seniority list Mattis, who had filled temporary vacancies for years on the 30-Ton Roll Crane, preferred to be promoted to a "permanent" position as the fourth man on that list and Elboar, his junior on the Warehouse Crane list took the less preferred "permanent" position on the Charging Crane; that "there must have been an 'understanding'" (under Article VII, Section 6 (a), Paragraph 146) recognizing the 30-Ton Roll Crane as the top crane job because vacation vacancies thereon were filled, not by "the employees on the job and within the immediate supervisory group in which such vacancy occurs in accordance with the provisions of this Article", but, rather by employees with sequential standing on the Charging Crane; that vacation vacancies on the Charging Crane, in turn, were filled from the next lower occupation in the sequence, namely Warehouse Craneman; that when stepbacks were required, due to reduced operations in 1954 and 1955, Mattis worked both the 30-Ton Roll Crane and the Charging Crane, but Reyes who worked some turns on the Charging Crane was stepped back (around the lower box in the diagram occupied by the 30-Ton Roll Crane Operator) to Warehouse Crane Operator and did not work the 30-Ton Roll Crane. Reyes did not grieve that his stepback was more drastic than the treatment accorded to Mattis nor that in so doing the Company had regarded him as having lesser standing than Mattis who, technically, may have been on a lower job in the sequence. This and other circumstances, according to the Company's view justify the conclusion that although Charging Crane was in the higher box, the jobs were regarded and treated as though they were on the "same level for sequential standing purposes". It states that all of the vacancies above a 15 turn level of operations were regarded as permanent vacancies at the time the moves

discussed here were made and that Mattis, when he filled a permanent vacancy on the 30-Ton Roll Crane had reached the same sequential level as Reyes.

On behalf of Reyes' claim it is argued that Mattis never filled a permanent vacancy and as the fourth man on the 30-Ton Roll Crane seniority list he can only be regarded as having been listed because he had worked 30 turns on that job on extended operations. Accordingly, it is said, Mattis not having achieved his status by filling a permanent vacancy he does not come within the category of employees whose status is not to be disturbed under the terms of the Union's concession referred to in Arbitration No. 167 and the associated cases dealing with "extended operations".

Mattis, says the Union, for whatever reasons he may have had, permitted Reyes to occupy a higher job in the sequence without protest. Thus, he might have protested when the Charging Crane was brought into the Department in 1937, or if Reyes had been placed on that crane at a later date, at that time. Similarly, he might have protested (and the other employees on the seniority list for the 30-Ton Roll Crane might have protested) when, in 1950, and again in 1957, the Company represented the occupation of 30-Ton Roll Crane Operator as occupying a box below that of the Charging Crane Operator. The Union does not regard the series of vertical lines connecting the boxes as significant for the purposes of the inquiry in this case. The Union states that Mattis "probably" waived or was denied promotion when Reyes went ahead of him, but it has no more evidence to present of such waiver or denial than the Company has evidence of the "understanding" it believed to have been reached with respect to vacation vacancies. In both cases these are inferences and assumptions based upon customary states of fact which may or may not be justified in determining what took place in the instant situation.

The balance of considerations favors Reyes. Mattis' claim must of necessity be based on the contention that when he was placed on the seniority list as the fourth man on the 30-Ton Roll Crane he caught up with Reyes, who, somehow had outstripped him, and from that point on, he was on the "same job level \* \* \* (by filling a permanent opening)" as Reyes. (See Paragraph 151). For the purposes of this case, however, it is not essential to determine whether he filled a permanent vacancy, which, as indicated above, the Union denies. It is enough that the promotional sequence diagrams clearly subordinate the 30-Ton Roll Crane occupation to a level below that of the Charging Crane occupation.

Article VII, Section 3 deals with sequential sequences in considerable detail. It is said that they are intended "to provide definite lines of promotion and demotion" in accordance with stated criteria; that they should be established in such manner so that "each sequence step will provide opportunity for employees to become acquainted with and to prepare themselves for the requirements of the job above"; that they shall be arranged

"in ascending order of total average earnings on the jobs concerned."  
(Paragraph 137)

Sequence diagrams are explicitly required to be posted on bulletin boards, "together with a list of the employees in the sequence and their relative relationships" and they are required to remain in effect for the life of the Agreement unless changed by mutual agreement or as provided therein. (Paragraph 138). Under Paragraph 139 where a permanent change in the relationship of jobs occurs the sequence diagrams and lists are required to be revised and posted. Special provision is made for the filing of grievances relating to "such diagrams and lists".

Under the circumstances, Reyes was fully privileged to rely on the representations of the sequence diagram which showed his job (since 1950) to have been higher in the sequence than Mattis' jobs both as a Warehouse Crane Operator with preferential rights to fill vacancies on the 30-Ton Roll Crane and as a 30-Ton Roll Crane Operator. The contention that, for many purposes, Mattis and the long-time incumbents of the occupation of 30-Ton Roll Crane Operator regarded the 30-Ton Roll Crane as a "preferred" job must yield to the clear representation of the promotional sequence diagram. This representation was that the Charging Crane job, having been placed in a higher box, one who has achieved sequential standing therein is immune from being bumped by one with greater length of service who has not filled a permanent job on the same level. The Company's argument that the two boxes are on the same level for sequence and seniority purposes, notwithstanding the graphic manner in which they are depicted in the diagrams, when not based upon the subjective motivations of employees, not subject to proof, is founded on the existence of the vertical lines connecting the boxes. But the legend at the foot of the diagram makes it clear that the vertical lines have significance only in a limited respect, namely, that one promoting to a job placed higher than the two connected jobs (if there be one) need only promote through one or the other of the connected jobs. The authority for regarding "connected jobs" as being on the same level is obscure. In the instant case, Reyes had a right to rely upon the representation that he had the superior job without regard to the alleged "preferences" of employees in the sequence. Nor was the representation in error because the total average earnings for the Charging Crane Operators for the period October 2, 1950 to December 24, 1950 were one cent an hour higher than that of the 30-Ton Roll Crane Operators.

This conclusion is not affected by the circumstance that the senior employees on the 30-Ton Roll Crane were apparently content with their lot when the Charging Crane was made the highest job on the sequence diagrams. The Company suggests that they and Mattis filed no grievance at the time because they "must have known" that the arrangement of jobs on the diagram gave assurance that the jobs were on an equal level. There is no testimony in the record to this effect by any of the individuals who might have

so known and the Arbitrator has no authority to speculate as to this. The Company's hypothesis is no more consistent with the facts than the theory that the 30-Ton Roll Crane job, as the Company insists, was a "preferred" job in the sense that even if it were known not to have been the top job in the sequence, Mattis, coming up from the Warehouse Crane list, and the senior man on that list, may have been content to take the lower job he "preferred" rather than the higher job to which he might have pressed a claim.

Similarly, the fact that in 1954 and 1955, in a period of reduced operation, Reyes was stepped back from the Charging Crane to the Warehouse Crane and Mattis from the 30-Ton Roll Crane to the Charging Crane does not alter the conclusion that the Charging Crane occupation is the higher of the two. The failure to grieve past Company scheduling or assignment presently urged as a violation of the Agreement would be relevant and material evidence, if offered, on the question whether the grievant formerly regarded such action as consistent with the Agreement's provisions. That is to say, it would be evidence worthy of consideration in an inquiry as to how the parties interpreted and applied their Agreement. But here, no such evidence was offered. The naked fact that no grievance was filed in several instances does not support a conclusion that Reyes looked upon both jobs as being on a level for seniority purposes. There could be many reasons, including ignorance of his rights at the time, that would account for his failure to file a grievance.

#### AWARD

The grievance is granted. Reyes is entitled to the difference in the compensation of Charging Crane Operator and Warehouse Crane-man for the period of time he was supplanted by Mattis as Charging Crane Operator and he has been assigned to the Warehouse Craneman occupation.

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Peter Seitz,  
Assistant Permanent Arbitrator

Approved:

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David L. Cole,  
Permanent Arbitrator

Dated: January 28, 1959