Award No. 690
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 14-N-18
Appeal No. 1270
Arbitrator: Bert L. Luskin
April 21, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on August 7, 1980. Pre-hearing briefs had been submitted on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. R. T. Larson, Labor Relations Coordinator
Mr. H. Smith, Jr., Director, Corporate Health Service
Mr. R. C. Johnson, Superintendent, No. 3 Blooming Mill and No. 4 Slabbing Mill
Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. G. Rubin, Assistant Director, Personnel
Mr. G. W. Gott, Heater Foreman, No. 3 Blooming Mill and No. 4 Slabbing Mill
Mr. A. Maggi, Personnel Clerk, No. 3 Blooming Mill and No. 4 Slabbing Mill
Mr. L. R. Barkley, Administrative Assistant, Labor Relations
Mr. V. Soto, Labor Relations Representative
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Phil King, Chairman, Grievance Committee (Acting)
Mr. Allen L. Gunn, Jr., Grievance Committeeman
Mr. Nick Paunovich, Former Grievance Committeeman

BACKGROUND

Commencing with the week of January 15, 1978, the Company introduced six-day scheduling for employees in the heating, rolling and mobile equipment sequence at the No. 4 Slabbing Mill Department. Employees were scheduled to work six eight-hour turns per week, and those schedules were adopted for the weeks of January 15, January 22, January 29, February 5 and February 12, 1978. The Company informed Union representatives that it had adopted those types of schedules in order to make certain that sufficient employees would be available on each turn to provide the necessary manpower in the department's labor pool. That form of scheduling resulted in the scheduling of some of the sequential employees to work in occupations lower in the sequence than the highest sequential occupations on which they had been permanently established on the sequential seniority listing. Some sequentially established employees who were in the lowest occupations in the sequence were required to work outside of their sequence when they were scheduled to work in the labor pool. By agreement of the parties the sequences in the No. 4 Slabbing Mill had been structured on the basis of a twenty and twenty-one turn level of operations.

A grievance was filed (Grievance No. 14-N-18) contending that the affected sequence employees should not have been demoted from their permanent sequential seniority standing jobs nor should some of the grievants have been demoted entirely out of the sequence in the weeks of January 15, January 22, January 29, February 5 and February 12, 1978. The grievance requested that those employees who were required to work at lower paying jobs than the jobs to which they were entitled by virtue of their sequential seniority job standings should be paid any moneys they were caused to lose as a result thereof. It further requested that the Company be required to cease and desist the institution of the form of scheduling which had led to the filing of the grievance. The grievance contended that the Company had violated Article 13, Sections 1, 3, 4, 6 and 9, of the Collective Bargaining Agreement.

The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The Union contended that Article 13 of the August 1, 1977, Collective Bargaining Agreement places great emphasis on an employee's standing within a sequence. The Union contended that although substantial and

significant changes and modifications were made to the seniority concept at the Company's request and insistence, the Company is now ignoring the principles of sequential standing by scheduling employees in jobs beneath the position which they have achieved in their sequence. The Union contended that (in the instant case) the Company scheduled some employees into the labor pool outside of their sequence for substantial periods of time, even though work was available in jobs in their respective sequence standing. The Union contended that the Company went so far as to schedule overtime in a manner which resulted in the displacement of some employees from their permanent positions. The Union contended that as a result the Company assumed overtime liability during periods of time when available employees were working in occupations below those they had achieved within the sequence or were working entirely out of their respective sequences.

The Union contended that under Article 13, Section 9, the Company can "step back" within a sequence to the fifteen-turn level of operations after which work is shared to a 32-hour per week minimum before established employees are demoted out of their sequence. The Union contended that the Company did not follow those procedures. The Union contended that the inclusion of newly negotiated mandatory language in Article 13, Section 6, permitted the establishment of a fourth crew where more than fifteen turns per week were worked in a non-continuous operation in order that more employees could achieve permanent status within a sequence. The Union contended that the employees achieving standing within a sequence as a result thereof had a right to be scheduled in accordance with their sequence standing whenever such work was available.

The Union contended that if the Company's position is sustained, a dangerous precedent would be established since the Company could, at some future time, contend that it would be appropriate for the Company to schedule two twelve-hour shifts per day. The Union contended that, under those circumstances, although more senior employees would be compensated for overtime hours, employees who had achieved sequential standing in accordance with their seniority rights would be deprived of the opportunity to work within their sequence even though the work was available.

The Union contended that the decisions in other arbitration awards cited by the Company as applicable for precedential purposes were based upon contractual language and seniority principles that were substantially different from the contractual procedures that had been established by virtue of the provisions of Article 13 (Seniority) of the 1977 Collective Bargaining Agreement and the Local Agreements.

The Company contended that it made the decision to schedule in the manner complained of by the Union in order to make certain that qualified, experienced employees would be available and could be scheduled to perform the duties of the occupations that had to be filled in order to meet production requirements during an unusual period of time. The Company contended that there were substantial and significant energy problems existing in January, 1978, at a period of time when a national coal strike created a potential of plantwide energy-related lay offs. The Company contended that a curtailment of hiring created a condition whereby there were not enough departmental employees available to fill all of the required positions for laborers and positions in the lower levels of the sequence. The Company contended that it exercised a reasonable, sound business judgment which it had a contractual right to do when it decided to schedule employees for six days in order to make certain that the Company could internally generate manpower for work in the lower-rated classifications and in the labor pool. The Company contended that its decision was neither arbitrary nor capricious, and although it resulted in downgrading some employees it also resulted in upgrading others. It also provided overtime work opportunities for all employees under circumstances where employees with the greatest amount of seniority could work the overtime hours either in their own classification or in higher-rated classifications within their respective sequences.

The Company contended that in every instance during the period of the six-day schedule in question, employees were properly scheduled in accordance with their sequential standing relative to one another. The Company contended that no employee's sequential rights were violated with respect to any other employee's sequential rights. The Company contended that it strictly followed the required seniority principles and it followed the requirements set forth in the applicable provisions of Article 13. The Company further contended that the Union has never pointed to a single instance where a junior employee was scheduled "around" or "ahead of" a senior employee in violation of the senior employee's sequential standing. The Company contended that there are no recorded instances where the Company could be charged with improperly filling a sequential temporary vacancy by the promotion of a junior sequential employee ahead of a senior sequential employee.

The Company contended that the grievants have not been deprived of sequential standing by virtue of the six-day scheduling. The Company contended that the grievants remain members of their respective

sequences and continue to hold standing at their permanently established levels in the sequences. The Company contended that the seniority lists have not been challenged and the form of scheduling did not alter the sequential standing of any grievant.

The Company contended that there is no single provision of the Agreement that serves to guarantee a form of scheduling that would require the Company to schedule employees in occupations no lower than those on which they are permanently established. The Company contended that the language appearing in Article 13, Section 1 (Definition of Seniority) has remained essentially the same (except for some modifications) for many years and is based upon the concept that it will provide certain considerations for employees "in accord with their seniority status relative to one another." The Company contended that no single provision of the Seniority Article or any other article of the Agreement, confers upon an employee the right to be scheduled on a specific occupation. The Company contended that it complied with the Agreement when it considered length of continuous service among employees in regard to promotional opportunities and job security.

The Company contended that there are numerous decisions of arbitrators under Agreements between the parties that support the Company's position in this case. The Company contended that the seniority concept of sequential standing has remained fundamentally unchanged since the 1947 Agreement. The Company contended that, although the 1976 Agreement established the fundamental principle of plantwide seniority in the place and stead of sequential seniority, the change did not affect the procedures to be followed in the application of seniority principle when schedules are adopted.

The Company contended that Arbitrator Cole's decision in Award No. 589, issued in 1967, is dispositive of the issue in this case. The Company contended that the arbitrator reviewed the effects of six-day scheduling in the Open Hearth Department and he concluded that the Agreement did not restrict the Company in its right to schedule in that manner even though the scheduling resulted in providing the most senior employee with overtime opportunities in their permanent positions with a consequent demotion of other employees from their permanent positions. The Company contended that the effect of that type of scheduling was similar to and identical with the ultimate effect of the type of scheduling to which the grievants objected in this case.

The Company contended that it has the right to voluntarily incur overtime liability and its election to do so in this case does not constitute a violation of any provision of the Agreement.

The procedure followed by the Company in the scheduling of the forces in question during the period of time covered by the grievance did not involve or require the application of work-sharing principles. Article 13, Section 9, therefore, would have no application to the instant case since that provision establishes a formula to be followed in instances where it becomes necessary to "reduce operations because of decreased business activity." The exact opposite situation occurred during the period in question. The Company had initially underestimated its manpower needs because of an external situation. In January, 1978, the Company found that it had a compelling need for the services of employees in all classifications within the department in question. It had a special need for the services of employees in the lower-rated classifications in the sequence, as well as a need for additional manpower in the departmental labor pool. The Company concluded that it could fill those needs by a form of six-day scheduling that is in issue in this case.

The Union argued that the Company should initially have scheduled all employees in the sequence on a five-day basis and the Company could then have provided its additional manpower needs by the use of overtime scheduling. It was the Union's position that, had the Company followed that procedure, all employees could have been initially scheduled for five days in their attained positions within the sequence and they would not have been subjected to downgrades or demotions out of the sequence and into the labor pool. The Company, however, did not elect to follow that procedure since it was convinced that it would have been unable to obtain the services of the required numbers of employees for employment for the lower-rated or the labor-pool positions unless employees were actually scheduled in that manner.

What is of essential significance is that the procedure followed by the Company in instituting the six-day form of scheduling commencing with the week of January 15, 1978, and continuing for a period of time thereafter, did not constitute a violation of any single provision of the Collective Bargaining Agreement. An employee who achieves sequential standing does not receive an absolute guarantee that he will, in all instances, be scheduled into the highest sequential classification into which he has achieved standing. His seniority rights are not violated unless employees below him in standing are improperly moved ahead of him. That did not occur and there is no contention advanced that anyone's individual seniority rights (in relationship to other employees in the sequence) had been in any way violated by the form of scheduling followed by the Company for the weeks in question.

In 1976 plantwide service was substituted for sequential service as a measurement standard for determining relative seniority positions within the sequence. That change, however, did not serve to change the method and procedures to be followed by the Company in scheduling the working forces so long as the appropriate seniority principles were followed in the initial scheduling of the forces.

In 1962 Arbitrator Cole issued Award No. 425 between the parties denying a series of grievances arising out of the claim of employees that the Company had improperly denied them the opportunity to be promoted or upgraded for one turn in a week. The grievants had asserted in that case that they had worked five turns in the week, whereas employees in the top job were scheduled for six turns. It was the contention of those grievants that the sixth turn in that week should have been treated as a temporary vacancy and filled by promotion of employees from a lower rated job. Arbitrator Cole found that the Company was under no obligation to try avoid overtime by resorting to a "fill-in" device. The arbitrator ruled that he could find no contractual violation under circumstances where the Company elected to have regular employees work an additional turn. He based that determination upon the exercise of a management right that is "...too well established and recognized to call for such documentation."

In 1967 Arbitrator Cole issued Inland Award No. 589. In that case the Company departed from a procedure which it had followed for six years when it instituted a crew scheduling plan that served to rotate the 21st turn among the four crews scheduled in the department. It made that change during a high level of operation when it encountered difficulty in obtaining a sufficient number of laborers to perform a number of required tasks. The scheduling change made more laborers available and filled the immediate needs of the Company. The Union contended in that case that the 21st turn constituted a permanent vacancy that should have been filled by upgrades. The Union contended that the procedure instituted by the Company resulted in displacing employees from sequential operations and stepping them back to the labor pool and by denying them the opportunity to upgrade to superior job vacancies. Arbitrator Cole concluded that the new form of scheduling "has been hard on junior employees." He found that it improved the overtime earnings of the senior employees since they could perform the overtime work at their highest rate of pay. He found that employees with sequential standing were downgraded into the labor pool at a time when operations were at a high level and were then upgraded when the level of operations declined. He found that there was nothing in the Agreement that restricted the Company in its right to engage in that type of scheduling. He found it to be more desirable for senior employees and less desirable for less senior employees. He found that, although the disadvantages to some employees may have been greater than the benefits to others, the scheduling procedure adopted by the Company was contractually permissive. Arbitrator Cole concluded by pointing out that the grievants in that case had seniority rights and the course followed by the Company did not serve to deprive them of their seniority standing. He found that the grievants were seeking a form of seniority protection which the Agreement did not provide.

The basic principles, the form of scheduling, and the impact on employees with the least amount of seniority within the sequence, is similar (in this case) to the impact upon the affected employees in the grievances that were the subject matter of Arbitrator Cole's decision in Award No. 589. The applicable contractual language would be similar. The institution of contractual changes within the Seniority Article that occurred between 1967 and 1977 would not serve to affect the decision in this case.

The Company had the right to schedule the departmental employees on a six-turn basis. That form of scheduling did not violate any provision of the 1977 Collective Bargaining Agreement. The Company could have followed the procedures suggested by the Union. The Company, however, was of the opinion that such a form of scheduling would not have provided the Company with the services of the employees within the lower-rated classifications (or the labor pool) where the need was essential.

There is no single provision of the Collective Bargaining Agreement that serves to provide an employee with a guarantee of employment within the highest-rated position in the sequence in which he has achieved standing. The evidence is conclusive concerning the application of seniority principles. The relationship of employees to each other on the basis of comparative seniority was followed in all instances and comparative seniority rights were honored in every respect. The most senior employees with standing were scheduled for six days in their own or in the higher-rated classifications. That resulted in diminishing the number of positions available for employees in the lower-rated classifications, including those employees with the least amount of seniority standing within the sequences. That form of scheduling did not constitute a violation of any single provision of the Collective Bargaining Agreement. The Company did not ignore the established concept of "standing" when it scheduled employees at jobs below those in which they were "established." The Company did not violate the concept of sequential standing when it became necessary to schedule some employees outside of their sequence. The procedures followed in this case did not constitute

a violation of the accepted concepts of standing or sequential integrity. Although the Company departed in this case from its emphasis on a form of scheduling designed to avoid overtime liability, it had a right to schedule in the manner that was followed in this case.

For the reasons hereinabove set forth, the arbitrator must find that the form of scheduling followed by the Company in the Heating, Rolling and Mobile Equipment sequences at the No. 4 Slabbing Mill Department for the weeks of January 15, January 22, January 29, February 5 and February 12, 1978, did not constitute a violation of any provision of the Agreement.

AWARD NO. 690

Grievance No. 14-N-18

The grievance is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

August 21, 1980