

Award No. 691
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 6-M-24

Appeal No. 1269

Arbitrator: Bert L. Luskin

June 25, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on October 14, 1980. Pre-hearing briefs were filed on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. Robert H. Ayres, Manager, Labor Relations
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations
Mr. L. R. Barkley, Administrative Assistant, Labor Relations
Mr. L. Jones, General Foreman, No. 3 AC Station, Power
Mr. V. Cherbak, Administrative Supervisor, Power and Fuels
Mr. R. Vela, Labor Relations Coordinator
Mr. R. B. Castle, Senior Labor Relations Representative
Mr. V. Soto, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. William Gales, Vice President, Grievance Committee
Mr. J. C. Porter, Assistant Secretary, Grievance Committee
Mr. Randy Vasilak, Griever
Mr. Joe Sowa, Griever
Mr. Ralph Schueberg, Grievant

BACKGROUND

Ralph Schueberg was employed by the Company on January 3, 1955. He is currently an employee of the Power Department. In December, 1976, Schueberg was established on the occupation of 3 AC Boilerhouse Fireman (Job No. 4) in the five step of the No. 3 AC Station Boilerhouse Operating Sequence. Schueberg had waived promotional rights pursuant to the provisions of Article 13, Section 6-g, of the Collective Bargaining Agreement. During the period of his waiver, seven employees junior to him in sequential seniority and plantwide seniority had filled vacancies in the position above the level of Job 4 and had thereby gained standing for promotional purposes over Schueberg.

Effective November 21, 1976, the parties entered into a memorandum of understanding which served to substitute plant-continuous service for departmental and sequential length of service for purposes of promotions and other seniority considerations.

On December 3, 1976, Schueberg withdrew his waiver pursuant to the application of the provisions appearing in Article 13, Section 6-g, of the Collective Bargaining Agreement. At the time of the withdrawal of Schueberg's waiver, he filled out the appropriate Company forms and set forth his reason for the waiver withdrawal stating that "I now feel that I am capable of handling the jobs of fireman." The form was completed, approved and it contained the names of seven employees who had moved around Schueberg and thereby gained higher standing ahead of Schueberg during the period of Schueberg's waiver. All of the seven named employees had less plantwide seniority than did Schueberg.

An employee named O'Rourke retired. As a result of the vacancy created by O'Rourke's retirement, an employee named D. Payne became established in the No. 3 AC Station Boilerhouse Operating Sequence. Payne had a plantwide seniority date of December 2, 1970. The Company used Payne's plant hiring date to place him in the appropriate position within Job 5 of the sequence. He immediately moved ahead of four other employees who had been established in that position in the sequence prior to Payne's entry but who had less plantwide seniority than did Payne. Since the other four employees had established the right to fill

vacancies ahead of Schueberg's right to fill a vacancy in a higher-rated classification, the Company then applied its "carry-around" principle. The Company took the position that since Payne had more plantwide seniority than did the four other employees in the Job 5 position in the sequence, Payne was also entitled to the same "standing" (in relationship to Schueberg) and the Company considered Payne to thereby have the right to move around Schueberg to fill vacancies in the same manner as did other employees who had achieved standing over Schueberg.

When Payne filled a vacancy in March, 1977, a grievance was filed by Schueberg contending that Schueberg's seniority rights had been violated by the Company because of the scheduling of a "younger" man ahead of Schueberg. Schueberg requested that he be paid all moneys lost and that he be made "whole on seniority."

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 Union contended that it was primarily protesting the application of the "carry-around principle" to Payne as a part of the group of employees who had gained standing over Schueberg while Schueberg's waiver was in effect. The Union contended that since Payne had not become established in the sequence prior to the time that Schueberg's waiver of promotion was withdrawn, Payne should be permitted to be considered established in the sequence ahead of the employees who had less plantwide seniority than did Payne, but he should not be considered to be established ahead of Schueberg who has greater plantwide seniority than does Payne.

The Union contended that the waiver provisions of Article 13, Section 6-g (August 1, 1974, Collective Bargaining Agreement), were designed to accommodate the sequential seniority system that was in effect prior to November 21, 1976. The Union contended that, under the old sequential seniority system, the "carry-around principle" was never extended to an employee who had not been a member of the sequence at the time a waiver had been in effect. The Union contended that the Company's application and interpretation would permit indeterminate numbers of employees to enter the sequence and by applying greater plant seniority dates they could theoretically establish standings ahead of Schueberg as a result of his prior lost standing. The Union contended that if that were permitted to occur, Schueberg's January 3, 1955, plant seniority date would serve no useful purpose in attempting to set aside the effect of his past waiver.

The Union contended that Schueberg should be permitted to promote to the occupation immediately above that of boilerhouse fireman (and other higher jobs in the sequence) ahead of Payne, but only after the future promotions of the seven junior employees who had properly gained standing by going around Schueberg while Schueberg's waiver was in effect. The Union contended that since Schueberg withdrew his waiver prior to Payne's entry into the sequence and since Schueberg has greater plant service than does Payne, Schueberg should be permitted to promote after the seven persons who had correctly moved around Schueberg, but he should not be required to be placed behind Payne for promotional purposes.

The Company contended that it correctly interpreted and applied Article 13, Section 6-g, and it correctly applied the plantwide principles established by the parties when they substituted the November 21, 1976, procedures for the principles of sequential seniority which had existed prior thereto.

The Company pointed to the fact that, although seniority concepts were changed as a result of the November 21, 1976, Memorandum of Understanding substituting plant-continuous service for departmental and sequential service for future promotional purposes, the parties did not simultaneously amend or change Article 13, Section 6-g. The Company contended that in the next Collective Bargaining Agreement negotiated between the parties in 1977 the pertinent portions of Article 13, Section 6-g, were reincorporated into the new Agreement without amendment or change.

The Company contended that under Article 13, Section 6-g, the most junior employee to gain standing due to a waiver by a more senior employee "carries" other employees in the group "around" the senior employee and that procedure and method was followed by the parties without change or modification ever since the signing of the May 7, 1947, Collective Bargaining Agreement. The Company contended that under that concept Schueberg cannot regain his standing until he has reached the same job level above by working a permanent vacancy. The Company contended that in the instant case Schueberg's promotion must come after the most junior employee to gain standing ahead of him has been promoted. The Company contended that since the parties agree that Payne has been properly placed above that junior employee for promotional purposes, Payne must also be promoted ahead of Schueberg irrespective of the fact that

Schueberg has greater plant service than does Payne and irrespective of the fact that Schueberg withdrew his waiver prior to Payne's entry into the sequence.

The Company contended that by virtue of the application of the provisions of the November 21, 1976, Memorandum of Understanding, it was contractually required to place Payne in a position where he is the most senior employee (on Job No. 5) in the sequence from among the four employees who became established on the same job in the sequence prior to Payne's entry into the sequence in January, 1977. The "carry-around principle" would require the Company to include Payne among the group of junior employees who had gained standing over Schueberg.

The Company contended that Schueberg's voluntary action in waiving promotion had adversely affected his promotional opportunities. It contended that Payne had a right to receive those seniority rights that had been in existence at the time that he entered the sequence and which had been conferred upon him as a result of the application of plantwide seniority pursuant to the November 21, 1976, Memorandum of Understanding. The Company pointed to the fact that if the Union's concept was to prevail in this instance, it would result in denying Payne his promotional rights until an employee who is junior to Payne is promoted ahead of Schueberg.

The Company contended that there is no contractual provision which would require Payne to relinquish his seniority rights to employees junior to him in plantwide seniority. The Company contended that there is no provision in the Agreement which would require employees junior to Schueberg who had achieved promotional rights by going around Schueberg during periods of time when Schueberg had been governed by the waiver, to relinquish their respective standings that had placed them ahead of Schueberg. The Company contended that the language in the November 21, 1976, Memorandum of Understandings does not support the Union's contention in this case.

The Company contended that senior employees under the plant seniority system will be accelerated on each occupation within promotional sequences by virtue of their greater plant length of continuous service. The Company contended that the basic purpose of the plant seniority system should not be undermined or defeated by the complaint of an employee who voluntarily waived promotional opportunities and at a later time changed his mind and withdrew that waiver. The Company contended that Schueberg knew precisely what would happen, since he was fully aware of the "carry-around principle" and he was aware of the impact of his waiver on future promotional opportunities. The Company contended that Schueberg was well aware of the fact that less senior employees had moved around Schueberg in accordance with the accepted and adopted procedures. The Company contended that, based upon the November 21, 1976, Memorandum of Understanding and the application of the contractual language appearing in Article 13, Section 6-g, of the August 1, 1974, Collective Bargaining Agreement, the Company properly included Payne among the group of employees junior to Schueberg in plantwide seniority who had gained standing over Schueberg in his sequence.

Immediately prior to Schueberg's withdrawal of his promotional waiver in December, 1976, the relative standings of the employees in the two classifications in question appeared as follows:

3 AC BOILERRHOUSE FIREMAN (J. C. 9) -- Job #4

	Plant Date
R. Schueberg	1-3-55
E. Chaffee	4-6-64
E. Taylor	5-6-69
E. Brown	12-22-69
M. L. Johnson	4-12-72

3 AC BOILERHOUSE OILER (J. C. 5) -- Job #5

	Plant Date
R. O'Rourke	12- -46
M. L. Johnson	4-12-72
T. Jelenek	8-22-72
J. Sponaule	8-30-72
E. Franko	12-4-72

Every employee junior to Schueberg in the above listed classifications had moved around Schueberg because Schueberg had frozen himself in his position. That was the result of the established "carry-around principle" that had been in effect for many years.

When O'Rourke retired, the vacancy was filled by the movement of Payne into the sequence and by his placement in Job #5 (3 AC Boilerhouse Oiler). The parties are in complete agreement that in accordance with the November 21, 1976, Memorandum of Understanding, Payne's seniority standing in the sequence placed him at the top of the five employees listed in Job #5. The relative standings and status of the incumbents of the boilerhouse oiler and boilerhouse fireman positions after Payne's entry in the sequence are as follows:

Job #4	Plant Date
R. Schueberg	1-3-55
E. Chaffee	4-6-64
E. Taylor	5-6-69
E. Brown	12-22-69
M. L. Johnson	4-12-72 (swingman)

Job #5	Plant Date
D. Payne	12-2-70
M. L. Johnson	4-12-72 (swingman)
T. Jelenek	8-22-72
J. Sponaugle	8-30-72
E. Franko	12-2-72

It is conceded that Chaffee, Taylor, Brown, Johnson, Jelenek, Sponaugle and Franko had all been carried around Schueberg as a result of his waiver under the provisions of Article 13, Section 6-g, of the Collective Bargaining Agreement. It is also conceded that if Schueberg had not revoked his waiver, the movement of Payne into the classification would have resulted under ordinary circumstances in carrying Payne around Schueberg in accordance with the "carry-around principle." The issue became complicated when, on November 21, 1976, the parties entered into their plantwide Memorandum of Understanding followed almost immediately thereafter by Schueberg's withdrawal of his Article 13, Section 6-g, waiver. At that point in time, seven listed employees had rights over Schueberg even though Schueberg (except for O'Rourke) was the most senior employee in the two classifications, not only on the basis of the former method of computing seniority but under the method adopted on November 21, 1976. When O'Rourke retired, followed by Payne's entry into the classification in January, 1977, the Company was compelled to follow the principles laid down in the November 21, 1976, Memorandum of Understanding by applying plantwide seniority and thereby placing Payne (the newest person in the classification) ahead of four other employees holding positions in the 3 AC Boilerhouse Oiler classification.

Article 13, Section 6-g, is hereinafter set forth as follows:

"g. WAIVER OF PROMOTIONS. An employee may only for good and valid reason waive promotion by signifying such intention to his supervisor in writing. Such waivers shall be noted in the personnel records and confirmed by the Company in writing. The employee may only for good and valid reason withdraw his waiver (which the Company shall also note in personnel records and confirm in writing), following which he shall again become eligible for promotion, but an employee who has so waived promotion and later withdraws it as herewith provided shall not be permitted to challenge the higher sequential standing of those who have stepped ahead of him while his waiver was in effect until he has reached the same job level above, by filling a permanent opening, as those who have stepped ahead of him, at which time his waiver shall be considered as having no further force and effect."

The November 21, 1976, Memorandum of Understanding did not serve to alter or amend the above-cited provision. It was later incorporated in the 1977 Bargaining Agreement without change or modification. Schueberg knew that employees with less seniority would move around him for promotional purposes into higher rated classifications during the period of the existence of his waiver. He knew that if he withdrew his waiver, that withdrawal would not automatically serve to alter Schueberg's standing until such time as future events might impact upon that standing.

If an exception were to be made by permitting Schueberg to achieve standing ahead of Payne based upon the fact that Schueberg had withdrawn his waiver before Payne entered the classification, the effect of that special treatment would serve to impair and to nullify the concept of "standing" and the application of the "carry-around principle" that had been in force and effect for many years and continued in force and effect after the November 21, 1976, change from sequential and departmental seniority to the principles of plantwide seniority.

If Schueberg's request was granted and Payne was placed behind Schueberg and was not allowed to "carry-around" Schueberg on the theory that his rights were achieved after Schueberg's waiver had been nullified, the impact of such a ruling would serve to impair the concept of "standing" and the application of the "carry-around principle." The Union has conceded that those employees placed below Payne continued to have the right to assert seniority over Schueberg by virtue of the application of the "carry-around principle." It would be literally impossible to maintain that principle and concept and to move employees Franko, Sponaugle and Jelenek around Schueberg and at the same time keep Payne from going around Schueberg even though relative standings gave Payne seniority status above any of these persons who concededly would have had the right to go around Schueberg.

The arbitrator is in agreement with the Union that the application of the "concepts of standing" and the "carry-around principle," together with the application of seniority rights established by virtue of the November 21, 1976, Memorandum of Understanding, would seem to create an inequitable impact upon Schueberg. It would appear that the inequity would result based upon the fact that Schueberg withdrew his waiver before Payne entered the sequence.

Schueberg knew exactly what he was doing when he requested and was granted a waiver under the provisions of Article 13, Section 6-g. He was aware of the fact that there were no changes in the language of Article 13, Section 6-g, after the parties had entered into the Memorandum of Understanding of November 21, 1976. He knew that when he withdrew his waiver (and was permitted to do so) that the concept of "standing" and the "carry-around principle" that had existed for many years were still in full force and effect. The only way in which the "carry-around principle" could be applied was the method followed by the Company. Until and unless the parties entered into an agreement that would constitute an alteration or modification of the language appearing in Article 13, Section 6-g, together with alterations and modifications to the concept of "standing" and the "carry-around principle," the Company was compelled to follow the procedure that was followed in this case. To do otherwise would have resulted in a breach of the seniority rights of Payne and it could have impacted upon and diminished the seniority rights of a number of other employees who had achieved "standing" as a result of having moved around Schueberg while his waiver was in effect.

It would be a relatively simple matter to correct what might at first blush appear to be an inequity by granting the Union's request and stating, in effect, that Payne has all of the rights to which he is entitled with the exception of the right to move around Schueberg. An award of that nature, however, while it might resolve an apparent inequitable situation, would constitute an alteration and an amendment to the existing contractual language, and this arbitrator is clearly without the authority to legislate language into the Agreement that does not appear therein.

It would follow, therefore, that, on the basis of the language appearing in Article 13, Section 6-g, together with the application of the seniority principles set forth in the November 21, 1976, Memorandum of Understanding, the arbitrator must find that the concept of "standing" is a valid concept. He must further find that the "carry-around principle" has never been changed, modified or altered by any agreement between the parties. He must further find that the procedure followed by the Company in this case did not constitute a violation of any of the provisions of Article 13, and more specifically Sections 1, 3 and 6, of the August 1, 1974, Collective Bargaining Agreement, when it included an employee named D. Payne among the group of employees who had gained "standing" for promotional purposes over the grievant Ralph Schueberg in the Power Department No. 3 AC Station Boilerhouse operating sequence.

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

AWARD NO. 691

Grievance No. 6-M-24

The grievance of Ralph Schueberg is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

June 25, 1981