

Award No. 818
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 6-S-17
Arbitrator: Clare B. McDermott
Opinion and Award
October 25, 1990

Subject: Alleged Special Commitment to Share Unplanned Overtime Equally.

Statement of the Grievance: "The Company failed to comply to the established overtime procedure during the reline of number 7 Blast Furnace involving the Utilities department.

"Relief sought The Company pay all overtime due grievant as if overtime procedure was followed.

"Violation is Claimed of Article 2, Section 2, Article 3, Section 1, and Article 4, Section 4."

Agreement Provisions Involved: Article 2, Section 2, Article 4, Section 4, and Article 13 of the August 1, 1986 Agreement.

Statement of the Award: The grievance is denied.

Chronology

Grievance Filed:	2-04-88
Step 3 Hearing:	3-09-88
Step 3 Minutes:	6-07-88
Step 4 Appeal:	5-06-88
Step 4 Hearing:	11-06-89
Step 4 Minutes:	11-13-89
Appealed to Arbitration:	11-14-89
Arbitration Hearing:	11-17-89

Appearances

Company

R. V. Cayia -- Section Manager, Union Relations
Benny Marvel -- Maintenance Supervisor, Utilities Department
Mike Iczkowski -- Operations Supervisor, Water Systems, Utilities Dept.
Laura Kocel -- Representative, Union Relations
William Peterson -- Representative, Union Relations
Roger Hughes -- Representative, Union Relations

Union

J. Robinson -- Arbitration Coordinator
Billy Sturdevant -- Griever
D. Lutes -- Sec. Gr. Comm.
Willie Spence -- Steward
Robert Young -- Grievant

BACKGROUND

This grievance from the Utilities Department of Indiana Harbor Works claims that Management did not carry out a foreman's alleged commitment to share overtime equally among employees in the sequence during a certain period, in violation of Article 2, Section 2, Article 3, and Article 4, Section 4 of the August 1, 1986 Agreement.

During all times relevant here grievant Young was established on the No. 11 Battery Water Treatment Plant Operator job.

Number 7 Blast Furnace was to be shut down from August 5 through November 10, 1987, for relining of the furnace proper and rebuilding of much of its support equipment. Thus, those operations that normally supply cooling and process water to the furnace were to be reduced significantly. Those operations include the pump houses for the water-circulation system, cooling towers, water-softening equipment, emergency generators, and thickeners, all of which are controlled by the Utilities Department. This was the first reline of No. 7 Blast Furnace.

The Utilities Department decided that during the period while the furnace would be down, manning of its Water Systems would be reduced. When the furnace is operating, a No. 7 Blast Furnace Water Systems Operator and an Assistant Operator, both in the Department's Biological Seniority Sequence, are assigned to those systems each turn, twenty-one turns per week. With only minimal operations of the water systems expected during the reline, and with much of the other work anticipated as being lubricating, painting, housekeeping, and heavy work involving removal of scrap, Supervision decided that only five employees, paid as No. 7 Blast Furnace Water Systems Operator, would be scheduled, day turn only, with the two back turns not manned.

With that reduced manning, the four employees established as No. 7 Blast Furnace Water Systems Operator and the No. 7 Blast Furnace Water Systems Assistant Operator with greatest plant continuous service were retained to work in the Blast Furnace Water Systems area. Less senior employees were stepped back out of the sequence and either laid off or assigned to temporary vacancies within their applicable choices in other areas of the department.

The top job in the Biological Seniority Sequence (No. 11 Battery Water Treatment Operator) was not affected by shutdown of No. 7 Blast Furnace, and one Operator per turn (including grievant) continued to be scheduled, as usual, in that capacity during the reline.

The table below shows the employees in the Biological Seniority Sequence in seniority order, indicating the effect on the jobs and employees of the shutdown of No. 7 Blast Furnace:

POSITION TITLE	NAME	RESULT
OPER WTR TR PL 11 BTY	K. Pavelka	No effect
OPER WTR TR PL 11 BTY	L. Hicks	No effect
OPER WTR TR PL 11 BTY	L. Truman	No effect
OPER WTR TR PL 11 BTY	R. Young	No effect
OPER WATER SYS 7 BF	J. Robinson	Wkd Oper Pos.
OPER WATER SYS 7 BF	J. Kleine	Wkd Oper Pos.
OPER WATER SYS 7 BF	D. Carey	Wkd Oper Pos.
OPER WATER SYS 7 BF	L. Scott	Wkd Oper Pos.
OPER ASST WT SYS 7 BF	D. Hokenson	Wkd Oper Pos.
OPER ASST WT SYS 7 BF	M. Elgin	Stepped-back
OPER ASST WT SYS 7 BF	L. Gates	Temp. Foreman
OPER ASST WT SYS 7 BF	W. Beauprey	Stepped-back
OPER ASST WT SYS 7 BF	H. Spungen	Stepped-back

No overtime was planned for employees on the No. 7 Blast Furnace Water Systems Operator during the shutdown period but, as it turned out, opportunities did occur when employees were needed to work overtime to finish tasks that had been begun on day turn and, for one reason or another, had not been finished. Some No. 7 Blast Furnace Water Systems Operators accumulated over twenty overtime turns in the approximate three-month shutdown period.

Utilities Department Operations Supervisor Iczkowski apparently was occupied on other responsibilities during this shutdown, and No. 7 Blast Furnace Assistant Water Systems Operator Gates was assigned as a Temporary Foreman during the reline to supervise activities of employees in the No. 7 Blast Furnace Water Systems area. As such, he was responsible for determining, among other things, who would work overtime turns. The Company says Gates had most knowledge of the No. 7 Blast Furnace Water Systems and that he got along with all employees well, having trained all employees new to the area.

Grievant continued to work at least forty hours per week on his No. 11 Battery Water Treatment Plant Operator during the whole shutdown period, plus thirty-seven overtime hours on that job. He complained, however, that he was not getting his fair share of overtime on the different No. 7 Blast Furnace Water Systems Operator job, and this grievance resulted.

The grievance originally alleged violation of a claimed established procedure for assigning overtime equally.

In Step 2 a charge of racial discrimination was added. Grievant and Gates, the Temporary Foremen who made the disputed overtime assignments, both are black men.

At the arbitration hearing grievant said also that before the reline-shutdown began, Temporary Foreman Gates and Supervisor Iczkowski were touring the No. 11 Battery area, and grievant had a discussion with Gates about overtime during the shutdown period. Grievant said Gates told him there would be a lot of

overtime during the reline-shutdown and that it would be shared equally within the sequence. Grievant says he told Gates to let him know when the overtime would start because he could use it, and Gates allegedly said "OK."

Grievant said that following that alleged conversation with Gates, time passed, until about mid-way through the shutdown, when he asked Supervisor Iczkowski about overtime, and Iczkowski said he knew nothing about that. Grievant said that in the first part of September he learned from another No. 11 Battery Water Treatment Plant Operator, Pavelka, that some such employees were getting overtime assignments. Grievant says he called Gates and asked if he could have overtime, and Gates allegedly said he would let grievant know when some overtime was available. Grievant says that after his telephone call to Gates, and after this oral complaint was filed (November 19, 1987), Gates called him back and said, if grievant were to go through with filing a grievance, it would make Gates look bad. Gates then allegedly told grievant to come out for overtime on September 16. Grievant claimed he worked overtime hours on that and the next day, but the Company says that did not occur until October 16 and 17.

Grievant says he continued to see that other No. 11 Battery Water Treatment Plant Operators, junior to him, were working overtime at No. 7 Blast Furnace. He then filed an oral complaint on November 19, 1987. Among other points, the Company replied that many of the overtime turns in dispute here required job duties associated with the No. 7 Blast Furnace Water Systems Operator. These were said to be operation of pumps and isolation of equipment. Since grievant never had worked that job, Management said he simply was not qualified to perform that work and, therefore, could not have been assigned to such overtime turns. Grievant answered that he had worked at No. 7 Blast Furnace area, in the blowdown-treatment facility and, therefore, that he did know the work.

Management replied that grievant had not come up in the sequence through the No. 7 Blast Furnace Water Systems jobs and that the job he had held in the blowdown operation was about 80 yards away from the Water Systems and gave grievant no knowledge of those operations.

Temporary Foreman Gates had been returned to the bargaining unit by the time of this arbitration hearing and, therefore, by reason of Article 7, Section 1, he could not be called as a witness by Management. In light of that bar, the Company submitted in this hearing Gates's five-page affidavit, explaining his view of what went on relative to this dispute. Gates there denied that he had made any commitment about overtime being shared equally, either before or during the reline-shutdown.

The following table indicates the overtime hours worked at the No. 7 Blast Furnace by the nine relevant employees in the disputed period:

EMPLOYEE	REGULAR JOB	OVERTIME HOURS WORKED AT NO. 7 BF BETWEEN 8-5-87 TO 11-10-87
J. Robinson	7 B.F. OPER.	155.8
J. Kleine	7 B.F. OPER.	32
D. Carey	7 B.F. OPER.	132.4
L. Scott	7 B.F. OPER.	38.7
D. Hokenson	7 B.F. ASST. OPER.	243.3
K. Pavelka	11 C.B. OPER.	91.5
R. Young	11 C.B. OPER.	26
L. Truman	11 C.B. OPER.	8
L. Hicks	11 C.B. OPER.	48

Supervisor Iczkowski explained that there are three water systems associated with these operations and that they cover a huge area. One cleans and scrubs gas. A second provides primary recirculating water within the furnace cooling jacket. The third is a secondary water system, helping to cool the primary system. Supervision originally thought all three systems would go down with the furnace, but it then was seen that the secondary system had to continue to operate because water was needed for fire protection, cooling for office air-conditioners, and cooling for computers. Thus, this secondary water system operated on all but two days of the reline-shutdown.

Iczkowski explained that employee Hokenson was the most senior No. 7 Blast Furnace Water Systems Assistant Operator and that he got most overtime because he was assigned to work with and assist the Electricians who worked on electrical equipment during the reline-shutdown.

Tasks performed by the other employees who worked any of the disputed overtime included testing the water on a daily basis and, depending upon the test results, making necessary chemical additions, recording integrator readings of water flowing in and out, isolating all mechanical and electrical equipment, as required, working with contractors (often vacuum-truck operations), locking out equipment, manning

pumps, and coordinating other activities with contractors. Iczkowski said all that required that the employee be familiar with this secondary-water system. Iczkowski testified that grievant did not have that knowledge, having come up through the sequence by a different path. He said the other employees assigned to this overtime did have that knowledge. Those employees also performed minor maintenance, labor work, painting, oiling and greasing, and removing of scrap, and those chores did not require the same degree of knowledge of operation of the secondary water systems. None of this was planned overtime. Iczkowski said, however, that the tasks not requiring water-systems knowledge were so intermingled throughout the turns with duties that did require that knowledge, that it was impossible to say in advance which overtime turns would or would not call for such knowledge.

Iczkowski explained that grievant recently had come off an extended absence, having been injured in an automobile accident. Grievant told Iczkowski that he was not yet 100 percent right. When Iczkowski told grievant that Pavelka, who got considerable overtime, was doing climbing and heavy lifting, grievant said he could not do that and that he wanted painting work.

The Company exhibited a chart, tending to show that perhaps sixteen overtime turns worked by other employees could not have been worked by grievant in any event because they were worked on second turn, when grievant already was scheduled and working on his regular No. 11 Battery Water Treatment Plant Operator at straight time.

Grievant testified that he did serve on a job at the No. 7 Blast Furnace Water Systems operations and that he had been shown around there a number of times sufficient to enable him to know those systems.

Grievant denied that he later asked Temporary Foreman Gates to assign him to this overtime only on his days off from 11 Battery. Grievant then said that when Gates made the alleged commitment to have overtime shared equally, Supervisor Iczkowski was there.

Iczkowski was recalled and testified that he heard no such commitment by Gates.

On cross-examination, grievant was asked several questions about how he would perform specific No. 7 Blast Furnace Water Systems tasks and where certain equipment was, and he admitted he had no idea about any of those chores or the location of any of that equipment. Iczkowski said it was necessary to know those tasks and equipment in order to pull many of these disputed overtime turns. The Company witness said also that such duties would arise periodically on those overtime turns, between more routine chores that did not require that awareness, which grievant could have done. But, because occurrence of the work grievant could have done was interspersed throughout the turn with duties he was not qualified to perform, Iczkowski said he could not be assigned to those turns.

FINDINGS

There is no evidence of an Article 2, Section 2 local working condition, requiring that this unplanned overtime be assigned equally.

In the circumstances of this grievance, there is no basis in Article 13 for grievant's insisting that the disputed overtime be shared equally. Nothing has been referred to which would show existence of a generally applicable seniority rule or overtime agreement, which would require that this unscheduled overtime be assigned equally within a sequence. This is especially so when it is realized that those who got any substantial volume of these overtime assignments were able, by reason of past assignments, to perform the operating tasks required by the No. 7 Blast Furnace Water Systems operations. Grievant was not qualified on those duties.

It became clear at the arbitration hearing that the sole basis for grievant's claim of racial discrimination, was the fact that No. 11 Battery Water Treatment Plant Operator Pavelka had much more of the disputed overtime than grievant did, and that Pavelka was a white man.

It must be said, first, that that is not a sufficient basis, standing alone, as it does here, to warrant a finding that these assignments were based in any way on improper motives of discrimination against grievant because he is a black man, in violation of Article 4, Section 4.

That simply becomes even more accurate when the other relevant factors are considered. First, two other employees had not much more of this overtime than did grievant, and they, too, are black men. Moreover, Temporary Foreman Gates, who made these assignments, is a black man, and there is nothing in evidence even to suggest that he would initiate a scheme to base these decisions on race so as to disadvantage another black man, or that he would join or participate in any such scheme initiated by higher supervisors, who are white men.

Moreover, the weight of the evidence taken as a whole indicates that grievant did not have the job and task knowledge sufficient to qualify him to carry out the many, many duties called for and performed on these unscheduled overtime turns. That was the wholly satisfactory explanation for grievant's not getting more of

those overtime turns and makes unnecessary and inappropriate grievant's resort to charges of racial discrimination as a meaningful basis for that result.

Finally, the evidence just is not sufficient to support a finding that Temporary Foreman Gates made any commitment to grievant that overtime during this reline-shutdown period would be shared equally by all employees in the sequence. Gates's affidavit denied that but, more significantly, grievant, himself, said that supervisor Iczkowski was present when Gates made the alleged commitment, and Iczkowski denied that in his testimony. Finally, if that was so significant to grievant's claim, as he indicates it was, it is not easy to understand why he would have waited as long as he did to bring it up.

Accordingly, since there is no basis on which the grievance could be sustained, it will be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator