

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 10-HA-3
Appeal No. 1168
Award No. 579

Opinion and Award

Appearances

For the Company:

Henry M. Thullen, Attorney
Alan S. Gratch, Attorney
Robert H. Ayres, Assistant Superintendent, Labor Relations
Arthur Zimmerman, Senior Personnel Counselor
Arthur Morris, General Electrical Foreman, Plant. #1 Mills

For the Union:

Peter Calacci, International Representative
James Balanoff, Secretary, Grievance Committee
Ralph Hutchinson, Grievance Committeeman, 76" Mill
Henry Fischer, Grievant
Arthur Vasquez

Four grievances are pending which involve the same issue, and the parties have agreed that Grievance No. 10-HA-3 shall serve as the pilot case for all four. The other grievances are 10-HA-4, 13-HA-6, and 6-HA-4.

The issue to be determined is whether the Company has violated Sections 1, 2, or 3 of Article X of the Agreement which was amended on June 29, 1963 by denying vacation pay for 1964 to the grievant, Henry Fischer. The question arose in connection with the special initial pension amount due to him upon retirement, as provided in Paragraphs 41 - 49 of the Pension Agreement of January 4, 1960.

Grievant is a voluntary retiree, his last day of work being December 31, 1963. He contends that he was entitled to vacation pay for 1964, pursuant to the provisions of Article X, and that he did not lose the right to this benefit under the stipulations of Section 3 of Article X, (Paragraph 223), which are:

"An employee, even though otherwise eligible under this Article, forfeits the right to receive vacation benefits under this Article if he quits, retires, or is discharged prior to January 1 of the vacation year."

The word "retires" was added to Section 3 in 1962. As the parties refined the issue, the question is whether he retired on December 31, 1963 or on January 1, 1964.

The parties have an agreed upon Pension Plan. This Plan stipulates when "retirement shall be considered to occur." In Paragraphs 20-25 the stipulation of when retirement occurs supports the Union's position that grievant's retirement occurred on January 1, 1964, not December 31, 1963. The Company, however, urges

that the Pension Plan is not relevant, because Paragraph 223 of the collective bargaining agreement uses the word "retires," which is an active verb, and that the meaning of this word in the full context of Paragraph 223 is distinguishable from the expression "retirement" or when "retirement shall be considered to occur," as used in the Pension Plan.

The Company makes a similar point with reference to a statement contained in a booklet it prepared and distributed called "Inland Pension Plan Revised July 1, 1962," which on its cover includes this legend: "Established Pursuant to Agreement with United Steelworkers of America." At Page 3 of this booklet the following appears:

"Retirement Date

"Your normal retirement date is the first day of the month following your 65th birthday. If you are in a collective bargaining unit, you may retire on your normal retirement date or on the first day of any subsequent month. Retirement dates for those not in bargaining units are subject to Company policy. Providing you meet the eligibility requirements, you may retire prior to your normal retirement date."

The heart of the Company's position is that Paragraph 223 must be applied in accordance with the normal meaning and usage of the words used. The key word is "retires" which means withdrawing from service, or permanently ceasing to work. This grievant completed his last turn of work at 3:30 p.m. on December 31, 1963, and at that moment he retired, as the Company sees it. On January 1, 1964 he was in the state of retirement but, on the Company's theory, he had prior thereto already taken all the steps or action contemplated by the verb "retires."

The Company insists that this view of the meaning of the word is supported by the consistent practice of the Company, not hitherto disputed by the Union, of treating an employee in the position of grievant as one who voluntarily retires before January 1 of the following year and therefore as not eligible for the vacation benefit in the new year. The Company offered evidence of such a practice running back to 1956.

The Company also contends that if an employee becomes 65 in September and does not retire until January 1, his benefits under the SVP would be subject to reduction by ten per cent pursuant to Section 5.1 of the parties' Savings and Vacation Plan as revised January 1, 1964, but that this reduction has not been made in such cases. The Company insists, in addition, that if the employee does not retire, under the facts of our case, until January 1, then January is not a full calendar month of retirement and, therefore, the special initial pension amount called for in Paragraphs 41 - 49 of the Pension Agreement would not be payable until the beginning of the three-month period starting February 1.

The issue to be determined in the grievance we are considering does not require a ruling on these two points. For one thing, the grievant, Henry Fischer, attained age 65 in December, 1963. More important, these points are relevant only to the extent that they bear on a practice from which an agreed-upon meaning of ambiguous contract language may be imputed.

The Union cited three awards in United States Steel arbitrations in support of its position. Two of these involved vacation benefits for employees who

performed no work in the calendar year in question. In Case No. USC - 1526 Arbitrator Clare B. Mc Dermott ruled on June 21, 1963, with the approval of the Board of Arbitration, that an employee who is entitled to vacation pay does not lose it because he dies before the end of the preceding year. In an earlier case, Case No. USC - 628, decided July 25, 1958, Chairman Sylvester Garrett of the Board of Arbitration determined that employees who discontinued work for disability reasons on December 31, 1956 were nevertheless entitled to their vacation benefits in 1957. It should be pointed out that the United States Steel contract, like ours, has had provisions excluding certain employees from the benefit of vacations in a given year. At the time of the earlier case, the agreement stipulated that an eligible employee would forfeit his right to vacation benefits "if he quits or is discharged prior to January 1 of the vacation year," and at the time when Case No. USC - 1526 was heard, the word "retires" had been added.

Neither of these cases is on all fours with our case. In Chairman Garrett's opinion, however, there are some statements which are noteworthy. He refers with approval to the third award cited by the Union in the instant case. This award was rendered by me as ad hoc arbitrator on December 10, 1953. It involved the rights to pensions of certain employees of United States Steel Corporation who had been on the active payroll through February 29, 1948, the question being whether they retired on that day or on March 1, 1948. The ruling was that they retired on March 1, not February 29. In the Garrett opinion, moreover, it was pointed out that an employee need not work in the year in which he is entitled to vacation benefits, -- that these benefits are accrued as part of his compensation in the previous year, a number of court decisions in support of this view being cited.

Of significance is the fact that the construction of the verb "retire" was the central issue in the 1953 United States Steel case, and it was held there that the employees retired the first day after they left the active payroll, not the last day they worked or were on the active payroll.

The distinction made by the Company in the instant case between "retires" and "retirement" is ingenious but not, under all the circumstances, conclusive. The parties evidently did not intend to draw such a distinction, as is reflected in the explanation of "Retirement Date" at page 3 of the booklet issued by the Company, quoted above. In this explanation the words are used interchangeably or synonymously, as for example, when it is stated that "Your retirement date is the first day of the month following your 65th birthday," and that "you may retire on your normal retirement date." Apparently, the act of retiring and the commencement of the state of retirement are taken to be the same day.

A stronger factor in favor of the Company's view is the practice followed by the Company and not disputed by the Union. It should be observed, however, that the word "retires" was not introduced into Section 3 of Article X until the agreement of April 6, 1962 was concluded. Since then, there were five employees whose retirement date was listed as January 1, 1963, and the Company stated that none of these received vacation benefits in 1963. There were also seven employees with January 1, 1964 retirement dates, but these included the four whose grievances are involved in this case, and the grievance of Henry Fischer protesting the denial of 1964 vacation benefits was filed promptly on December 31, 1963 and re-filed January 16, 1964 because the original filing had been premature. There is, therefore, really a practice in only one year which has not been questioned or disputed by the Union since it has been agreed that if an employee retires before January 1 he forfeits his vacation benefits in the

succeeding year. This is a short period in terms of a practice which may be said to give a particular meaning to words used in a contract as opposed to another meaning which seems reasonably to have been contemplated or intended by the parties.

This is an issue which could better have been avoided or resolved by clear contract language. The grievances at United States Steel, for example, indicated the area of doubt as to when an employee retires and whether he carries over his vacation rights into the year when he is no longer at work. The same doubt applied to the provisions of Paragraph 223 of the Inland agreement.

On balance, it would seem that the more reasonable interpretation is that for purposes of vacation rights, under the existing contract provisions, an employee does not lose his accrued benefits if he works through the end of the year and is on retirement the first day of the succeeding year. The reason for this is that he retires the same day he enters into retirement.

AWARD

This grievance is granted.

Dated: July 28, 1965

/s/ David L. Cole

David L. Cole
Permanent Arbitrator