

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010

Grievance No. 6-M-17  
Appeal No. 1241  
Award No. 646

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on June 16, 1978.

APPEARANCES

For the Company:

Mr. W. P. Boehler, Arbitration Coordinator, Labor Relations  
Mr. T. L. Kinach, Senior Labor Relations Representative  
Mr. W. C. Wingenroth, Assistant Superintendent, Labor Relations  
Mr. J. T. Surowiec, Labor Relations Representative  
Mr. T. J. Mulligan, Superintendent, Power and Fuels  
Mr. V. Cherbak, Administrative Supervisor, Power and Fuels  
Mr. R. Walker, Foreman, Power and Fuels  
Mr. D. F. Kilburg, Senior Staff Coordinator, Training

For the Union:

Mr. Theodore J. Rogus, Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee  
Mr. Alexander Jacque, Grievance Committeeman  
Mr. Harry Phillips, Griever  
Mr. John R. Vasilak, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

John R. Vasilak was employed by the Company on September 9, 1965. He became a Power Department employee on February 13, 1968, where he was thereafter employed in positions in the electrical operating sequence.

On October 4, 1976, Vasilak submitted a written request to his supervisor that he be granted a waiver of promotion pursuant to the provisions of Article 13, Section 6-g of the August 1, 1974 Collective Bargaining Agreement. Vasilak at that time was established on the No. 1 A. C. Power Station Operator occupation. That occupation is the 6th position from the bottom in the promotion line of progression out of a sequence of ten occupations.

Employees entering the electrical operating sequence start at Job Class 10 (the bottom position) and must pass a written test as a condition precedent for entry into that seniority sequence.

Vasilak's request for a "waiver of promotion" was motivated by a Memorandum of Agreement between the Company and the International Union which served to substitute plant-continuous service as the criteria for entry into classifications where vacancies exist instead of departmental or other forms of seniority. Vasilak was of the opinion that since there were seven Bargaining Unit employees below him in his sequence who had greater plant-wide continuous service than did Vasilak, any or all of those employees could at some

later point in time bypass Vasilak. He did not desire future promotion where he could thereafter be subjected to removal from the promoted position or would be denied further promotional opportunities. It was his position that he would at a subsequent point in time find himself in a swingman position without the chance to move on a permanent basis. He believed that he would be denied the opportunity to work the higher rated jobs often enough so that he would be unable to properly learn the operations involved in the highest rated positions in the sequence. He pointed to the fact that it would benefit the Company to train less senior people in vacancies above his permanent position since those persons with greater plant-wide seniority who were then below Vasilak in the sequence but who had greater plant-wide seniority could more easily move around him in order that they could assert their plant-wide seniority for promotional opportunities. He concluded that he would be in a much better position and the Company would be in a more advantageous position if he would be permitted to be frozen at 1 A. C. as his permanent position, since swinging between 1 A. C., 2 A. C. and 5 Sub without seeing a possibility of advancement on a permanent basis would justify his request for a waiver of promotion.

On October 19, 1976, the superintendent of the Power and Fuels Department denied his request, and on November 24, 1976, Vasilak was informed that "this cannot be accepted as good and valid reasons for waiving promotion and is therefore denied."

Discussions were thereafter held concerning the application of the provision of Article 13, Section 6-g of the Collective Bargaining Agreement, and on February 3, 1977, Grievance No. 6-M-17 was filed protesting the Company denial of Vasilak's request.

The issues arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

### DISCUSSION

The provision of the Agreement cited by the parties as directly applicable in the instant dispute is hereinafter set forth as follows:

#### "ARTICLE 13--SENIORITY

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#### "SECTION 6. FILLING OF VACANCIES AND STEP-BACKS WITHIN A SEQUENCE.

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13.40 "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 other than those resulting from operations in excess of fifteen (15) turns in the noncontinuous departments or the twenty-first (21st) turn in continuous departments) as those who have stepped ahead of him, at which time his waiver shall be considered as having no further force and effect."

The Union has also cited provisions of the Grievance Procedure and the Local Working Condition clause of the Contract.

The parties have made reference to "waivers" appearing in Article 13, Section 3 (Seniority Sequences).

The Union has contended that the language of Article 13, Section 6, does not provide the Company with the unilateral right to determine what constitutes "good and valid reason" to waive promotion. It was the contention of the

Union that a request for waiver is made by the employee who determines for himself what constitutes a "good and valid reason" to waive promotion. It was the Union's contention that an employee who elects to waive promotion suffers a penalty since in some instances he is thereafter denied the opportunity to promote to any job in the sequence, although in some departments an employee waiving a promotion can only be denied promotion to the specific position which he waived. The Union called attention to the fact that there are approximately 1,000 employees in the plant who have waived promotions and the Union contended that in the instant case the reasons cited by Vasilak were similar to and identical with reasons cited by other employees who requested waivers and were granted waivers. The Union further contended that the Company cannot establish different standards and guides for determining what constitutes "good and valid reasons" in various departments of the plant and the Company must apply its standards in a consistent manner.

The waiver-of-promotion language has appeared in Collective Bargaining Agreements between the parties since 1949. In 1965 the parties recognized the need for some changes in the language because of the existence of cases of "constructive waivers" and problems arising from waivers requested orally and granted orally. The parties agreed to change the contractual language which would thereafter require that requests for waivers of promotions must be made in writing. Constructive waiver concepts were dropped and arrangements were made to protect certain departmental practices whereby a waiver of promotion to one position did not result in a waiver of promotion to all positions in the seniority sequence.

A waiver of promotion can be made by an employee and the request must be granted provided the employee has a "good and valid reason" to waive the promotion. The decision with respect to what constitutes "good and valid reason" (or reasons) initially rests with the Company. The words "good and valid reason" constitute broad and general language. The parties did not say specifically that the Company had the absolute right to determine what constituted "good and valid reasons." The parties did not write the language in a manner which would permit the exercise of an unrestricted option by an employee to waive promotion. The administration of the language for many years provides a clear understanding as to what the parties intended the language to mean and what the parties intended would generally constitute "good and valid reason" to waive a promotion.

There is evidence in this record that requests for waiver of promotion in some departments have been granted, whereas requests for waivers of promotion in other departments have been denied for the very same reasons. It is evident that consideration has been given to the number of jobs in a sequence; the types of jobs in a sequence; the type of work being performed in a department and availability of employees to fill the jobs in a sequence or the sequences within a department. What may constitute a "good and valid reason" for a waiver of promotion within a particular sequence may not necessarily be applicable in other circumstances. By the same token, what may constitute a "good and valid reason" for one employee may not necessarily be considered to be a "good and valid reason" for another employee.

There are ten basic positions in the sequence in which the grievant works. Employees are tested before entry into the sequence. Employees train for movement up the line and employees can and should be able (by reason of repetition of schedules) to determine what their schedules will be several weeks in advance of their assignments unless unusual situations arise which require temporary assignments in the week preceding the week in which the changes must occur. Powerhouse operations are critical. There is evidence in the record that prior to 1965 out of a force of 350 employees some 43 were on waivers. By 1976 the force had been increased to approximately 525 and only 19 were on waivers for various reasons including ability problems, health problems and age.

The Superintendent of the Powerhouse testified that he considers "good and valid reasons" to include only problems involving an employee's ability to do the job, health problems or considerations caused by the age of the employee. Those reasons are narrow, unduly restrictive and they do not, in the opinion of the arbitrator, constitute the exclusive list of "good and valid reasons" which would justify a waiver of promotion. The Company does not have the absolute right of veto over an employee's request and, while the Company can deny a request, that denial is clearly subject to review in the grievance procedure in exactly the same manner as Vasilak determined in this case that he would protest the Company's decision to deny him a waiver of promotion. Each case has to be considered and a determination has to be made with respect to the fact circumstances applicable to the employee and the operation in order to determine whether the reasons cited by that employee are "good and valid reasons" which would justify the granting of his request to waive a promotion.

Vasilak testified that he began to evidence concern with respect to his future in the department and in the sequence after the parties entered into the 1976 Memorandum of Understanding which served to substitute plant continuous service for departmental and sequential length of service as a measure of determining continuous service for the reasons set forth therein. Vasilak noted that his sequence service was greater than that of seven employees below him in the sequence, but those seven employees had greater plant continuous service than did Vasilak. The grievant then became concerned with the possibility that as promotions became available those seven persons (or some of them) might move around him and that, although he was being trained and was filling in on higher rated positions, he would not find the higher rated positions open and available to him. It was the grievant's belief that he would spend a substantial portion of his time working as a swingman and his temporary promotions would cause him to be placed in a position where he could not reasonably anticipate the schedules which he would work and which would result in a hardship for Vasilak as well as create an adverse impact upon his family life. It was Vasilak's opinion that he was willing to pay the price of freezing himself in a position and waiving additional earnings through promotion in return for achieving what he believed to be a form of stability in the working position which he held at the time that he filed his grievance.

It would appear that some of the reasons cited by Vasilak were speculative and were predicated upon a belief that each and every person below him in sequential standing with greater plant service would eventually move



around Vasilak and promote to permanent positions before Vasilak could achieve those positions. An effort on the part of Vasilak to soften the impact of the 1976 Seniority Memorandum of Understanding is simply not a "good and valid reason" for the granting of a waiver of promotion. Vasilak always has the right to use his plant service date to transfer to a different sequence or department. He is not frozen in his sequence. While it is true that a number of employees who were granted waivers of promotion in 1965 and 1966 cited reasons similar to those cited by Vasilak, the fact remains that the new understandings between the parties concerning the requests for waivers to be in writing and confirmed in writing was a relatively new contractual procedure. Those same or similar reasons were not accepted in Vasilak's department.

There is no Local working condition in effect which would require the Company to automatically grant an employee's request for a waiver of promotion. A request for a waiver of promotion is made pursuant to the specific language set forth in Article 13, Section 6g. What constitutes "good and valid reasons" will depend upon the particular circumstances that exist and the nature of the reasons cited by the employee in support of his request. Consideration of ability, health or age are by no means the only reasons which could be considered "good and valid" for waiver of promotion. In the instant case, however, the reasons cited by the grievant involve matters of speculation which may never occur and they involve matters of convenience which cannot be considered to be of such pressing importance as to constitute good and valid reasons for the granting of a waiver of promotion.

The Company did not violate any specific provision of the Collective Bargaining Agreement when it denied the grievant's request for a waiver of promotion.

AWARD

Grievance No. 6-M-17.  
Award No. 646

The grievance of John R. Vasilak is denied.

*Paul S. Perkins*  
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ARBITRATOR

August 7, 1978

CHRONOLOGY

Grievance No. 6-M-17

Grievance filed (Step 3)	February 3, 1977
Step 3 Hearing	April 6, 1977
Step 3 Minutes	May 20, 1977
Step 4 Appeal	May 26, 1977
Step 4 Hearing	November 9, 1977
Step 4 Minutes	March 21, 1978
Appeal to Arbitration	April 3, 1978
Arbitration Hearing	June 16, 1978
Award Issued	August 7, 1978