

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

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) Grievance No. 10-M-75
) Appeal No. 1248
) Award No. 650
) Grievance of Arthur Mata
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INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on October 19, 1978.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. R. H. Ayres, Manager, Labor Relations
Mr. W. C. Wingenroth, Superintendent, Industrial Relations Planning
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations
Ms. K. Mussie, Labor Relations Representative
Mr. R. A. Senour, Superintendent, Plant No. 1 Mills
Mr. E. Rippe, General Foreman, Plant No. 1 Mills
Mr. A. Weathersby, Mill Foreman, Plant No. 1 Mills

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. John A. Santos, Griever
Mr. Arthur Mata, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Arthur Mata was employed by the Company in 1967. In February, 1977, Mata worked at the 24-inch bar mill department, Plant No. 1 Mills.

Mata was scheduled to work the 4:00 to 12:00 turn on February 21, 1977, as a Gaugeman on the 24-inch bar mill finishing section. That turn was a production turn which would immediately precede a scheduled mill down turn.

At approximately 9:30 P.M. Mata was informed by his foreman that the scheduled production could not be completed by midnight and all production employees would have to work overtime. Mata was informed that the production scheduled for that turn would have to be completed and the bed cleared in order that repairs and roll changes could be completed on the planned down turns. The completion of production would have permitted the set-up to be broken and a three-stand roll change could have been made on the 12:00 to 8:00 down turn as planned.

When Mata was initially informed that his services would be needed for some overtime, he informed the supervisor that he did not want to work any overtime since he was "physically exhausted." The supervisor asked Mata how he could expect to continue at work until midnight if he was physically exhausted at 9:30 P.M. Mata responded by stating that he could go until midnight, but he was too tired to continue on an overtime basis. Mata was informed that if he failed to work overtime after being ordered to do so, he

would be subject to the imposition of disciplinary measures. The supervisor informed Mata that if enough people reported for work at midnight and if Mata could be spared at that time, he would be permitted to go home at the end of the shift.

At approximately 10:00 P.M. the foreman approached Mata and informed him that he had checked the labor schedule and there did not appear to be enough persons scheduled in at midnight to permit Mata to be spared and allowed to go home at midnight. He did state to Mata that if extra employees reported for work Mata would be permitted to go home.

At approximately 12:05 A.M. the foreman discovered that Mata was not at work and had left shortly before midnight. Mata had not picked up his timecard and had not punched it out. Employees who stayed overtime were able to complete the production schedule and the clearing of the bed in approximately .8 of an hour after the end of the shift.

On February 23, 1977, Mata was issued a discipline statement informing him that he had been directed to work overtime on his scheduled occupation and had refused to work overtime, "offering no acceptable excuse." The discipline form stated that Mata had been again directed to work the overtime and warned of the consequences of failing to stay over as directed. The statement indicated that Mata had left at approximately midnight in violation of "explicit directions," and insubordination of that type was an extremely serious violation of Company rules and could not be tolerated. He was informed that he was being disciplined with one turn off and future violations

of this nature "will be cause for more severe disciplinary action." Discussions arising out of Mata's protest concerning the alleged unjustification for the issuance of the suspension were held in Steps 1 and 2 of the grievance procedure and, on April 21, 1977, a grievance report was submitted and signed by Mata, who was an Assistant Grievance Committeeman, charging the Company with a violation of Article 3, Section 1, of the Collective Bargaining Agreement.

In the Step 3 hearing the Union requested that the grievance be amended to charge violations of Article 2, Section 2, Article 4, Section 2, and Article 14, Section 1, of the Collective Bargaining Agreement. The Company objected to the request for the amendment to the grievance on the grounds that the Union had failed to offer any testimony by witnesses at the hearing to support its contention that the additional provisions of the Agreement had been violated. The Company contended that Article 6, Section 3, specifically sets forth the procedures that must be followed when the Union seeks to amend the grievance record by the inclusion of charges relating to the alleged violation of provisions of the Agreement in addition to those specifically enumerated in the preliminary grievance meetings and in the grievance record.

The Union contended that the Contract permits the amendment of the grievance and the additional alleged violations of the Agreement relied upon by the Union do not constitute a violation of the procedural steps of the grievance procedure.

The Union contended that Mata was physically exhausted and his statement to the foreman to that effect should have been accepted as a reasonable excuse for Mata's unwillingness to work the overtime in question. The

Union contended that Mata had been relieved in accordance with a customary established practice in the Department and, since Mata had been relieved, there was no need or necessity for him to continue in employment after the end of the scheduled shift of work.

The issues arising out of the grievance submitted by Mata became the subject matter of this arbitration proceeding.

DISCUSSION

Article 6, Section 3, Step 3 (Reference 6.8 and 6.9), is clear and unambiguous. The procedures for the processing of grievances through the preliminary steps of the grievance procedure are set forth and are followed by the parties. The Company relied upon the following contractual language when it contended that the Union failed to offer any testimony of witnesses at the Third Step meeting as a basis for its contentions that violations of the Agreement, in addition to those originally set forth by the Union, had taken place. The language is hereinafter set forth as follows:

"ARTICLE 6

"SECTION 3. GRIEVANCE PROCEDURE.

- 6.8 "STEP 3. If the grievance remains unsettled, the Union Step 3 Representative duly certified to the Company in writing by the Local Union Recording Secretary may within seven (7) days after the grievance record is forwarded to the Chairman of the Grievance Committee request in writing a meeting with a representative of the office of the Superintendent of Labor Relations for the purpose of reviewing the grievance. The Union Step 3 Representative

may alter the Union's position as set forth in the grievance record by submitting the Union's altered position in writing at the time he requests such meeting. No grievance appealed from Step 2 shall be considered in Step 3 in the absence of a full grievance record. Grievances appealed to this step by Friday shall be heard at a meeting to be held on the following Wednesday and the representative of the office of the Superintendent of Labor Relations shall advise the Union Step 3 Representative of his decision in writing within ten (10) days after such meeting.

- 6.9 "The discussion in this Step 3 shall be limited to whether there exists a violation of the Agreement as set forth in the grievance record, except that a new violation of the Agreement may be alleged by the Union at the Step 3 meeting when the basis for the new allegation is testimony of witnesses first given at such meeting. In which event, and at the request of either party, the grievance may be held over until the Step 3 meeting in the following week in order to permit a full and complete discussion of the alleged new violation."

The Union did not offer testimony to support its contention that the Company had violated Article 2, Section 2; Article 4, Section 2; and Article 14, Section 1, in addition to its basic contention that the Company had violated Article 3, Section 1, of the Collective Bargaining Agreement. The Union relied upon the record as it existed to support its contention that provisions of the Agreement, in addition to the one cited in the original grievance, had been violated by the Company when it imposed discipline against the grievant Mata.

From an analysis of all of the evidence in the record, the arbitrator must conclude that the Union did not offer testimony at the arbitration hearing that would support its contention that Article 2, Section 2 (Local Working Conditions), had been violated by the Company. The Company was always aware of the Union's contention that Mata had claimed that he had been relieved

by an employee on the next shift. The evidence indicates that some 37 employees had worked on the 4:00 P.M. to midnight shift and the following shift would have been a down turn with the result that only ten employees were scheduled for that turn. Mata had worked as a gaugeman performing banding operations and no one on the next turn had been assigned to perform that function. There is further evidence in the record that the individual who Mata contended had relieved him did not work the midnight to 8:00 A.M. shift on the day in question. There was no established practice or custom which would have permitted Mata to have left the plant at midnight on the theory that he had been properly relieved and was under no obligation to continue in employment for an overtime period following the end of his shift.

Article 4, Section 2, was not violated by the Company since the evidence will not support a conclusion or finding that the Company discriminated against Mata because he was an Assistant Griever and had registered his opposition to compulsory overtime. Mata was treated no differently than anybody else when he was asked to work overtime and the issue should properly turn on the question of whether cause existed for the imposition of discipline based upon the facts and circumstances present in this case. The Company clearly did not violate Article 4, Section 2, of the Collective Bargaining Agreement.

Article 14, Section 1 (Safety and Health), was not in issue in this case. Mata made no claim of illness nor did he claim that his health or safety would have been in jeopardy if he had worked for a relatively short period of time after the end of the shift.

The issue initially turned on the question of whether "cause" existed for the imposition of disciplinary measures against Mata and, since the ultimate decision will be based upon the application of the contractual language in that provision, the arbitrator need not make a ruling in this case with respect to the procedural objection raised by the Company.

The Union contended that Mata should not have been required to work overtime after he informed his foreman that he was physically exhausted and could not work beyond the end of the shift. The Union contended that the foreman had not made a sufficient effort to attempt to obtain the services of another employee in order that Mata could be permitted to go home at the end of his shift. The Union contended that the foreman owed Mata the obligation of advising Mata prior to midnight that a replacement for Mata was not available. The Union contended that if the foreman did not believe Mata's contention that he was physically unable to continue in employment beyond midnight, then and in that event the foreman should have sent Mata to the Inland Clinic to determine whether Mata might require medical attention.

Several employees in the Department would have completed sixteen continuous hours of work at midnight. Other employees had worked extensive overtime, and the foreman did not believe that they should have been required to continue to work overtime hours in order to accommodate Mata under circumstances where the foreman did not believe that Mata was so physically exhausted that he could not continue in employment for a relatively short period of time until the planned production had been completed and the bed cleared.

The foreman talked with Mata at 9:30 P.M. He told Mata exactly what he had told other employees when he found that production would have to continue for a relatively short period of time after the end of the shift at midnight. In the opinion of the foreman, Mata did not appear to be physically exhausted. His work assignment did not involve heavy physical effort. His work assignment during the course of the shift had not involved a critical, pressing or a hot type of operation. Mata had been off for two days preceding the turn in question. In the preceding week he had worked only 30.5 hours. In the week commencing February 6, 1977, he had worked 40 hours. In the week commencing January 30, 1977, he had worked only 24 hours. Mata made no request to be permitted to go to the clinic for examination or treatment at 9:30 P.M. There is nothing in this record which would indicate that Mata offered a reasonable explanation for his inability to work beyond the end of the shift, nor is there anything in this record that would have permitted the foreman to reach a reasonable conclusion that Mata was indeed physically exhausted and should not have been required to work beyond the end of his shift of work.

The Company had the right to make the assignment. It had the right to request and to direct Mata to continue in employment beyond the end of his shift. The evidence would indicate that the foreman did, in fact, make reasonable efforts to attempt to obtain a replacement for Mata. The foreman talked to a number of employees who would have to be released at midnight because they had worked extensive overtime hours. The foreman was unable to obtain the services of an additional employee who could replace Mata for the required period

of overtime needed to complete the operations. When Mata was informed at 10:00 P.M. that the foreman could not find a replacement for Mata, the foreman suggested to Mata that Mata check with the foreman at midnight and if enough employees showed up to work Mata could then be released. Mata did not wait to talk with the foreman. He left before it was possible for the foreman to determine whether enough employees had arrived for work at midnight so as to make it possible to permit Mata to leave at that time.

Employees are required to work overtime when they are directed to do so. They should be excused from working the overtime if they have a reason so compelling in nature as to justify such an excuse. A foreman may not refuse to listen to a reasonable request to be excused from working overtime and a foreman may not arbitrarily refuse to accept a reasonable excuse for an employee's inability to work overtime hours. Every case must be determined on the basis of its own merits. All relevant factors must be considered. A mere statement by an employee that he is "tired" or "physically exhausted" is not enough to justify an excuse from an overtime assignment where a replacement is not immediately available. A claim by an employee that he is "too tired" or "physically exhausted" may very well be a reasonable excuse for not working overtime hours if the facts and circumstances would support a conclusion that the employee is, in fact, physically exhausted or could be expected to be too tired to continue in employment. In the instant case, Mata's assignment during the shift was not a physically demanding one. He was not working at an accelerated pace. He was not working under adverse conditions. The amount of anticipated overtime would not have been unreasonable since it would have extended from an estimated period of approximately fifteen minutes to a maximum of approximately two hours.

Mata had returned to work after having been off for two days. He had worked very little overtime in the weeks preceding the day in question. Other employees had been issued similar instructions and they worked the overtime. Some employees had been excused from the overtime assignment because equitable considerations would have justified their being excused. The evidence in the record would indicate that the foreman did excuse some employees from working the overtime hours because they would already have worked substantial overtime hours by midnight or, in several instances, their services would not have been needed because they were actually being replaced by employees reporting on the following shift.

The Union contended that the Company had consistently followed a practice of under-scheduling employees in the Department in question, and then making unreasonable demands upon employees to work overtime hours that should have been anticipated by members of supervision. That contention would not have direct application to the facts and circumstances in this case. Production was scheduled to end at midnight since the following turn would be a down turn. The Company had a right to reasonably conclude that scheduled production would have been completed by midnight and the employees scheduled to start at midnight would have been performing down turn functions.

In every supporting decision cited by the parties, the arbitrators have uniformly held that the Company could order and direct employees to work reasonable overtime hours. In every decision cited by both parties, the arbitrators uniformly held that refusal and failure to carry out a direction of supervision to work overtime would constitute an act of insubordination. In

practically all of the decisions cited by the parties, the arbitrators examined into the fact situations in order to determine whether the excuse offered by the employee and the circumstances surrounding the assignment were of such compelling a nature as to justify a conclusion that the employee should be excused from working the overtime assignment. In each case, the decision was based upon the applicable facts and circumstances relating to the assignment, the excuse offered by the employee, and the circumstances surrounding the need for the employee's services.

Mata had been given a direct order. He did not provide his foreman with a reasonable excuse that would have justified his leaving at the end of the shift. He last spoke with the foreman at approximately 10:00 P.M. He did not tell the foreman at that time that he was going home at midnight. He did not talk with the foreman at midnight, and he committed a clear act of insubordination when he left the plant after having been warned that he would be subject to disciplinary measures if he failed and refused to work beyond midnight. The Company had just cause for invoking discipline against Mata and a one-day suspension from employment would have to be considered to be reasonable in light of the failure and refusal of Mata to carry out a direct order of supervision.

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

AWARD

Grievance No. 10-M-75
Award No. 650

Cause existed for the imposition of a one-day suspension from employment against Arthur Mata. The grievance is hereby denied.

Bert G. Larkin
ARBITRATOR

November 17, 1978

CHRONOLOGY

Grievance No. 10-M-75

Grievance filed	April 21, 1977
Step 3 Hearing	November 16, 1977
Step 3 Minutes	February 22, 1978
Step 4 Appeal	March 8, 1978
Step 4 Hearing	April 12, 1978
Step 4 Minutes	September 11, 1978
Appeal to Arbitration	September 15, 1978
Arbitration Hearing	October 19, 1978
Date of Award	November 17, 1978