

In the Matter of the Arbitration Between

INLAND STEEL COMPANY )

AND )

UNITED STEELWORKERS OF AMERICA )  
AND ITS LOCAL UNION 1010 )

Grievance No. 20-M-65

Appeal No. 1258

Award No. 657

#### INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 6, 1979.

#### APPEARANCES

##### For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations  
Mr. R. H. Ayres, Manager, Labor Relations, Industrial Relations  
Mr. W. C. Wingenroth, Superintendent, Industrial Relations Planning  
Mr. P. R. Arsenault, Superintendent, Central Mechanical Maintenance  
Mr. J. J. Santini, Assistant Superintendent, Central Mechanical Maintenance  
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations  
Mr. B. R. Iczkowski, General Foreman, Pipe Shop, Central Mechanical Maintenance  
Mr. R. T. Larson, Senior Representative, Labor Relations  
Mr. J. T. Surowiec, Representative Labor Relations

##### For the Union:

Mr. Theodore J. Rogus, Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. John Sessa, Assistant Griever

Mr. Robert M. Ortiz, Grievant

Mr. Cesar G. Morales, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

In the week of January 23, 1977, a pipe fitter welder named Duvall worked as a temporary foreman on the 7:00 to 3:00 turn in accordance with the provisions of Article 13, Section 14, of the Collective Bargaining Agreement. In that same week an employee named Ortiz worked as a pipe fitter welder performing various maintenance tasks throughout the plant. Ortiz worked in that week as a member of the "north end crew" on the 7:00 to 3:00 turn (Monday through Friday). On January 25, 1977, several employees working as pipe fitter welders were doubled over (at overtime rates) to work the 3:00 to 11:00 turn at the Zurn Strainer Room, 80" hot strip department. Duvall, who had worked the 7:00 A.M. to 3:00 P.M. turn as a temporary foreman, worked the 3:00 P.M. to 11:00 P.M. as a pipe fitter welder.

On February 18, 1977, an oral complaint was registered on behalf of Ortiz contending that Duvall had no right to work the overtime turn (3:00 to 11:00) on January 25, 1977. In a second step hearing the Company agreed that Duvall, who had been working as a temporary foreman, could not and should not have worked as a pipe fitter at the Zurn Strainer Room on January 25, 1977,

after having completed an eight-hour turn on that same day as a temporary foreman. The overtime turn resulted in providing Duvall with eight hours of overtime to which he would not have been entitled by virtue of the fact that he had worked as a temporary foreman. The Company conceded the erroneous assignment and agreed that it would "cease and desist" from making similar overtime assignments in the future. The Company, however, did not agree that Ortiz (or any other pipe fitter welder) was entitled to monetary compensation as a result of the erroneous assignment to Duvall. Ortiz then filed a grievance requesting reimbursement for the overtime turn worked by Duvall on January 25, 1977. 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 basic facts are not in dispute. The Company agreed that for some period of time an understanding had existed between the parties whereby overtime opportunities would be offered to pipe shop employees in accordance with certain priorities. The work would first be offered to pipe fitters working on the job requiring overtime. The work would then be offered to pipe fitters assigned to the work group covering the geographic area in which the job requiring overtime is located. The work would then be offered to all other pipe fitters. The Company conceded that the temporary foreman (Duvall) mistakenly assumed that the overtime practice would include overtime work for the temporary foreman who had supervised the job and who was aware of its

progress. The Company conceded that Duvall had no right, either by practice or by virtue of contractual language, to have worked the additional shift and to have doubled-over without first having offered the assignment to pipe fitters in the three categories referred to. The Company conceded that the grievant (Ortiz) was not offered the extra shift of work. The Company conceded that there were some twenty pipe fitters who were available on that day and twelve employees in that group were offered the opportunity to double over. Seven pipe fitters from the north end crew declined the proffered overtime.

The Company's primary contention in this case is that, although Article 13, Section 14 (Reference paragraph 13.78) was violated when temporary foreman Duvall worked the shift in question, there is no provision in the Agreement for invoking a monetary penalty by the payment of moneys to Ortiz. The Company contended that, although other provisions of the Seniority Article specifically permit payment of monetary penalties for the violations thereof, the only remedy available to Ortiz or to the Union (in view of the Company's concession of contractual violation) would be the issuance of an award requiring the Company to cease and desist from further or future violations of a similar nature. The Company contended that since it had already agreed to "cease and desist" from future violations of a similar nature, there would be no necessity for the issuance of an award that would provide any remedy other than the one agreed to by the Company.

The Company further contended that it has equalized overtime opportunities for employees in the pipe fitter group to a degree whereby, at the time of the filing of the grievance, Ortiz and Duvall were approximately equal

in the number of overtime hours worked and made available to them. The Company contended that as of the date of the third step hearing Duvall had worked or had been offered 56.7 overtime hours (1977), and in that same period of time Ortiz had worked or had been offered 81 overtime hours. The Company further contended that there was no certainty and no assurance that, even if Duvall had not worked the doubled shift, the shift would have been worked by Ortiz, since he had in the past turned down a similar overtime opportunity.

The Union contended that a contractual violation had occurred under circumstances where the Company had conceded that Duvall had no right to the shift of work in question. The Union contended that there are many provisions of the Agreement which do not provide for specific monetary damages and arbitrators have consistently awarded monetary damages where employees have suffered monetary losses as a result of a violation of those provisions. The Union contended that Ortiz was one of several employees who should have worked the shift in question in the place and stead of Duvall, but since Ortiz had asserted his contractual rights by filing a grievance he was the eligible employee who was entitled to the opportunity of working the shift in question in the place and stead of Duvall and he had every right to ask and claim the monetary loss to a pipe fitter which resulted from the contractual violation.

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

"ARTICLE 13 - SENIORITY

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"SECTION 14. SENIORITY WITH RELATION TO SUPERVISORY OCCUPATIONS.

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13.78 "Employees who are assigned as temporary foremen shall continue to be considered as employees under this Agreement, except that the selection and retention of employees for such job, the terms and conditions of their employment as temporary foremen, and their duties and responsibilities as foremen shall not be and are not covered by this Agreement. A temporary foreman shall not issue reprimand and disciplinary letters. An employee working as a temporary foreman shall not in the same workweek be permitted to work additional turns in the bargaining unit which result in a total number of turns greater than he would have worked had he not been temporarily working in a supervisory position."

The above cited provision makes it evident that Duvall was ineligible for the overtime shift in question. The assignment of Duvall in violation of the Agreement resulted in depriving a pipe fitter welder of an overtime opportunity to which he was entitled by virtue of an established understanding reached between the pipe fitter group and the superintendent.

The arbitrator would agree that, under certain circumstances, violations of provisions of the Agreement relating to the scheduling of the forces would not necessarily permit the issuance of an award for monetary damages. Under certain circumstances, an award requiring the Company to cease and desist from following procedures that are inconsistent with and in violation of provisions of the Agreement would be the appropriate remedy. Two awards cited by the Company in support of its position in this case would serve to emphasize that concept. In an award issued on June 30, 1970, (USS-7600-S), by Arbitrator McDermott and approved by Chairman Garrett on behalf of the U. S. S. Board of Arbitration, the Arbitrator found that a disputed assignment made to a temporary foreman was in violation of a provision of the Agreement. He further found that the grievance would be sustained "to the extent of directing that such assignments not be repeated." The facts in that case indicated that the Company had

the need for certain pipe fitters and, when the Company was unsuccessful in attempting to contact the grievant, it assigned an employee who had worked as a temporary foreman for the previous five days to an overtime turn on Saturday. Having found that the Company had unsuccessfully attempted to call the grievant for the disputed turn, the Arbitrator found that "no reimbursement would be due to grievant." The fact remains that, although the Company could have used pipe fitters from other areas and failed to attempt to do so, the grievance was filed by two employees who could not substantiate a claim for monetary damages.

In a companion case, issued by the same Arbitrator and approved by the same Chairman on the same day, arising out of a different U. S. Steel plant (USS-7680-S), the Arbitrator found that the improper assignment of a temporary foreman constituted a violation of the applicable provision of the Agreement. The Company was required to "cease and desist." He further found that the evidence "does not indicate that grievant suffered any loss of earnings by reason of the improper assignment in question. Thus, since no earnings were lost, no reimbursement is due."

The facts in this case differ from the fact situations in the cited opinions. In the instant case, the problem does not arise out of a scheduling violation. The Company violated a provision of the Agreement relating to the utilization of the services of a temporary foreman and it violated an agreed-upon practice, custom and understanding relating to assignment of certain Bargaining Unit employees for overtime opportunities. Duvall had no right to share in the overtime opportunity that existed on the day in question. He was a complete and total stranger to the group for that particular overtime assignment. Any attempt on the part of the Company to thereafter equalize overtime

opportunities would not serve to correct the loss of an overtime opportunity for a group of employees which could never be adjusted at some later point in time by equalizing distribution. Duvall was as ineligible to work that overtime assignment as any regular foreman or any other excluded employee. Ortiz was one of a number of employees who would have been eligible for the assignment in question. Since no other eligible employee filed a grievance, Ortiz' grievance would have to be sustained. There was an actual monetary loss and, under those circumstances, Ortiz was entitled to be compensated as a result of the violation.

For the reasons hereinabove set forth, the arbitrator must find that the Company violated Article 13, Section 14 (Reference paragraph 13.78) when it permitted temporary foreman Duvall to work an overtime shift that should properly have been worked by an eligible Bargaining Unit employee pursuant to the agreed-upon custom and practice relating to overtime assignments to the pipe fitter group.

AWARD

Grievance No. 20-M-65

Award No. 657

The grievance of Robert M. Ortiz (Check No. 2927) is sustained.

Robert L. Lundgren  
ARBITRATOR

March 29, 1979



CHRONOLOGY

Grievance No. 20-M-65

Grievance Filed	June 20, 1977
Step 3 Hearing	July 6, 1977
Step 3 Minutes	August 9, 1977
Step 4 Appeal	August 22, 1977
Step 4 Hearings	November 3, 1977 October 2, 1978 October 12, 1978
Step 4 Minutes	February 9, 1979
Appeal to Arbitration	February 12, 1979
Arbitration Hearing	March 6, 1979
Date of Award	March 29, 1979