Award No. 701
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 3-N-62
Appeal No. 1304
Arbitrator: Bert L. Luskin
August 13, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 20, 1981. Pre-hearing briefs were submitted on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. R. B. Castle, Senior Representative, Labor Relations
Mr. F. J. Rocchio, Jr., Superintendent, No. 3 Coke Plant
Mr. A. A. Bracco, Superintendent, No. 2 Coke Plant
Mr. M. O. Oliver, Representative, Labor Relations
Mr. J. Follmer, Supervisor, Labor Relations, Inland Steel Mining Company
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyuzko, Chairman, Grievance Committee
Mr. J. C. Porter, Secretary, Grievance Committee
Mr. Jinmie Freeman, Griever
Mr. Joe Frantz, Grievance Committeeman

BACKGROUND

On February 22, 1980, Grievance Committeeman Freeman filed Grievance No. 3-N-62 on behalf of the pre-heat and battery sequences employees of the No. 3 Coke Plant. The grievance contended that the Company was in violation of the Collective Bargaining Agreement by posting a schedule that deviated from the normal work pattern and the agreed-to schedule of 5-2 with frozen days off. The grievance requested that the Company cease and desist from the use of the present scheduling and the grievance requested that the Company return to the 5-2 form of schedule that had been in effect for the past twenty-eight years.

The grievance claimed a violation of Article 2, Section 2, Article 3, Section 1, and Article 10, Sections 1 and 5, of the Collective Bargaining Agreement.

From the date of the commencement of operations at the No. 3 Coke Plant, the employees of the pre-heat and battery sequence had been scheduled on a basis where they worked five consecutive work days and were off two days. The schedule was thereafter repeated. As a result thereof each employee had the same "frozen" days off each week.

In the early part of December, 1979, the Company instituted a rotating schedule after establishing four permanent crews. The schedule was structured in a manner whereby employees worked five consecutive days and were off two days. The rotating nature of the schedule required each crew to work a sixth day in five out of every twenty-one weeks. As a result of the institution of that form of scheduling (known in industrial circles as a "Timken" type of schedule) the frozen days off which had existed for many years were eliminated. It was the institution of that type of schedule that resulted in the filing of the instant grievance.

The grievance was denied and was processed through the preliminary steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The provisions of the Agreement cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 2
"SCOPE OF AGREEMENT

"Section 2. Local Working Conditions. The term 'local working conditions' as used herein means specific practices or customs which reflect detailed application of the subject matter within the scope of wages, hours of work, or other conditions of employment and includes local agreements, written or oral, on such matters.....

"Section 1. Except as limited by the provisions of this Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, ...and to manage the properties in the traditional manner are vested exclusively in the Company, provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union.

"ARTICLE 10

"HOURS OF WORK

"Section 1.

"c Normal Work Pattern

"(1) The normal work pattern shall be five (5) consecutive workdays beginning on the first day of any 7-consecutive-day period. . . . .

"(2) A work pattern of less or more than five (5) workdays in the 7-consecutive-day period shall not be considered as deviating from the normal work pattern provided the workdays are consecutive.

"d. Schedules

"(1) All employees shall be scheduled on the basis of the normal work pattern except where: (a) such schedules regularly would require the payment of overtime; (b) deviations from the normal work pattern are necessary because of breakdowns or other matters beyond the control of the Company; or (c) schedules deviating from the normal work pattern are established by agreement between the Company and the grievance committeeman of the department involved.

"(3) Schedules may be changed by the Company at any time except where by local agreement schedules are not to be changed in the absence of mutual agreement; . . . . ."

Although the Union contended that Article 11, Section 3, was applicable in the instant dispute, those provisions of the Contract concern themselves with payments of overtime and holiday pay under certain conditions and circumstances, and would not be directly applicable in the instant dispute. The fact that (under the new scheduling) overtime opportunities might not be available for the 21st turn as those opportunities may have existed in the past, would have no bearing on whether the Company had the contractual right to institute the schedule that led to the filing of the grievance.

The newly instituted schedule was adopted by the Company in conformance with the Company's contractual right to schedule and in conformance with the limitations placed upon that right by virtue of the language appearing in Article 10, Section 1, of the Collective Bargaining Agreement. The schedule did meet the requirements set forth in Article 10, Section 1 c (1) and (2).

The Union contended, however, that the schedule of 5-2 (with frozen days off) had been established and had been in effect for so long a period of time as to have achieved contractual force and effect pursuant to the provisions appearing in Article 2, Section 2 (Local Working Conditions) of the Collective Bargaining Agreement. The Union contended that since a local working condition had been established, the provisions of Article 10, Section 1 d (3) became applicable. The Union contended that under those circumstances the schedule could not be changed except by mutual agreement of the parties.

The basic contention advanced by the Union in this case is similar to contentions advanced by the Union in numerous similar and almost identical situations under collective bargaining agreements in basic steel where the contractual language was identical with the language appearing in this Collective Bargaining Agreement. In every cited instance, arbitrators in basic steel have held that the Company has the right to schedule. They have held that a local working condition cannot supersede rights established by virtue of the clear and unambiguous language of the collective bargaining agreement. Those arbitrators have held that, except in those instances where the Company has entered into agreements (on a local basis) to freeze an existing schedule which cannot thereafter be changed except by mutual agreement of the parties, the Company had the right to change a schedule provided that the changed schedule conforms with the specific provisions of the collective bargaining agreement relating to hours of work and scheduling procedures.

There can be no question but that the type of schedule instituted by the Company that led to the filing of this grievance conformed with the scheduling requirement of the Contract. The fact that the 5-2 schedule (with frozen days off) had been in existence for many years, did not preclude the Company from instituting the schedule change that led to the filing of Grievance No. 3-N-62 in February, 1980. The local working condition clause did not have applicability in this case. The fact that some employees may have lost some

overtime working opportunities as a result of the institution of a rotating crew schedule in the place of a 5-2 schedule (with frozen days off) would not constitute a violation of any provision of the Collective Bargaining Agreement.

Some of the findings in this case are identical with the decisions of Arbitrator Kelliher in Inland Award No. 479 and Arbitrator Cole in Inland Award No. 624. This arbitrator has heretofore found in Inland Award No. 654 that a local working condition cannot replace or supersede a specific provision of the Agreement. Artibrators Dybeck (United States Steel Corporation), Seibel (Jones and Laughlin Steel Corporation, Platt and Stashower (Republic Steel Corporation), and Seward (Bethlehem Steel Company) have at one time or another issued similar awards based upon their respective interpretations of identical language appearing in collective bargaining agreements between the same International Union and those steel companies.

The arbitrator must, therefore, find that the schedule instituted in the Preheat and Battery Sequences at the No. 3 Coke Plant that became effective in December, 1979, met the scheduling requirements of the Collective Bargaining Agreement. Those schedules did not result in the violation of any provisions of the Agreement between the parties. For the reasons hereinabove set forth, the award will be as follows:

AWARD No. 701

Grievance No. 3-N-62

The grievance is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

August 13, 1981