Arbitration Award No. 756
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 27-P-58
Arbitrator: Clare B. McDermott
Opinion and Award
December 19, 1985
Subject: Option of Department Superintendent to Continue Use of Pour Crews for Two Weeks in Certain Circumstances Upon Reduction from Twenty Turns to Fifteen to Nineteen.
Statement of the Grievance: "Employees with standing are being scheduled only four (4) days in their sequence while nonsequential employees are given as many as five (5) turns.
". . .
"Relief Sought: Schedule employees properly and pay all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 13, Sections 1,3,4,6 & 9."
Agreement Provisions Involved: Article 13, Section 9-a(1) (a) of the August 1, 1980 Agreement.
Statement of the Award: The grievance is denied.
CHRONOLOGY
Filed: December 17, 1981
Step 3 Hearing: March 23, 1982
Seep 3 Minutes: September 8, 1982
Step 4 Appeal: September 17, 1982
Step 4 Hearing: October 25, 1984
Step 4 Minutes: January 21, 1985
Appeal to Arbitration: February 5, 1985
Arbitration Hearing: February 27, 1985
Appearances
Company
Robert B. Castle -- Arbitration Coordinator, Labor Relations
Timothy L. Kinach -- Assistant Superintendent, Labor Relations
Roy LaBarge -- Administrative Supervisor, 10" & 14" Mills Department (Retired)
Andy Spak -- Administrative Supervisor, 12" Mill Department (Retired)
Nadine McDowell -- Labor Relations Representative, Labor Relations
Union
Tom Barrett -- Staff Representative
Joe Gyurko -- Chairman Grievance Committee
Don Lutes -- Secretary Grievance Committee
Dennis Shattuck -- Griever
BACKGROUND
This grievance from the Billet Dock at the 12" Bar Mill of Indiana Harbor Works claims violation of Section 9-a(1)(a) (paragraph 13.47) of Article 13 of the August 1, 1980 Agreement when, during a period of reduced operations, Supervision scheduled and worked nonsequential employees four or five turns in some weeks when sequential employees had only four turns.
In the spring and summer of 1981 the Stocking Sequence and the Conditioning Sequence at one time or another had been operating at twenty turns a week or higher, manned by four crews. Each sequence then had following weeks when operations went down to nineteen and eighteen turns.
When operations were at twenty turns a week, some employees needed to fill the four crews were not established in the sequence. That is, they were working there as applicants for temporary vacancies and were not sequential employees, in that they did not have a seniority date in the sequence. At twenty turns, that made no difference for present purposes, for all four crews, both nonsequential and sequential employees, necessarily had five turns a week.

When operations went below twenty turns a week, however, in March, April, May, and June, the Department Superintendent elected to continue using four crews, so that some employees in some crews necessarily had only four turns in some weeks, while others, most employees, had five. In some of those weeks there were sequential employees (those with seniority standing established in the sequence) who had only four turns, while some of the nonsequential employees (applicants who had no established standing in the sequence) had four or five. At the arbitration hearing, the parties stipulated that, after examination of schedules and Management's recognition of erroneous arrangements in two weeks affected by a holiday, there were only four such weeks remaining in dispute, those of March 15 (Stocking), April 5 (Stocking), and June 14 and 21 (both sequences).

This grievance followed, with the Union insisting that nonsequential employees may not share work within a sequence until all sequential employees first have been assured of five turns a week.

The governing language is that part of Section 9 of Article 13, reading as follows:

"Article 13--Seniority

"13.45 Section 9. Force and Crew Reductions Due to Lack of Business. When it becomes necessary to reduce operations because of decreased business activity, the procedures set forth in paragraph 'a', 'b', and 'c' shall be followed, unless otherwise mutually agreed between the superintendent of the department and superintendent of the department and the grievance committeeman of the Union for that area involved:

"13.45.1 a. Noncontinuous Operation Except Truck Driver Sequence and Yard Department (Mobile Equipment and Hooker Sequences)

"13.46 (1) Sequential occupations (multiple occupation sequences)

"13.47 (a) In reducing operations within a sequence or portion of a sequence, employees will be first stepped back within a sequence toward a 15-turn level of operation in accordance with their standing except that in such a sequence or portion of a sequence where operations have reached a twenty (20) or more turn level and is manned by scheduling four (4) crews, the department superintendent may elect to schedule employees in such sequence or portion of sequence for not less than thirty-two (32) hours per week until two (2) consecutive weeks have been worked for less than twenty (20) turns and more than fifteen (15) turns per payroll week; it being understood, however, that at any time when such a sequence or portion of a sequence is scheduled for fifteen (15) turns per payroll week employees shall be displaced from the sequence to a 15-turn level and scheduled on a three-crew basis.

13.48 "(b) Should a further reduction in operations below fifteen (15) turns per week take place, where practicable, the hours of work within a sequence shall be reduced to not less than thirty-two (32) hours per week before anyone with standing in a sequence is displaced therefrom.

13.49 "(c) Should there be a further decrease in work, employees will be displaced from the sequence according to the seniority status as defined in the following provisions of this Section in order to maintain the thirty-two (32) hour week. Employees will be demoted in the reverse order of the promotional sequence in accordance with the provisions of this Article."

The Union contends that the language of paragraph 13.47 requires that Management maintain a five-turn week for sequential employees before nonsequential employees are scheduled in the sequence. It says nonsequential employees have no job rights in these sequences for present purposes. It is conceded that Management may assign nonsequential employees within a sequence in certain situations, such as to avoid payment of overtime, but the Union stresses that overtime-avoidance was not involved here, but that the Company simply continued to schedule four crews even though there was not enough work for four.

The Union cites Inland Awards 515 (1963) and 463 (1962), urging that the first held that sequential employees cannot be scheduled for less than five turns so long as nonsequential employees are scheduled in the sequence, and second decided that sequential employees have a right to work any turn that will give them five in preference to nonsequential employees. The Union thus insists that when Supervision elects to keep four crews on going down from twenty turns it must see first that all sequential employees get five turns a week, and only if there are additional slots, as there will be, may they be assigned to nonsequential employees.

The Company starts off by saying that there are only two conditions necessary to what it calls the department superintendent's option under Section 9-a(1)(a) of Article 13: Operations in these sequences had reached a twenty-turn level, and they had been manned by scheduling four crews. There is no dispute that both conditions had occurred here. The Company stresses that there is no provision in the Agreement restricting use of applicants (nonsequential employees) on the fourth crew in these circumstances. It is said also that nothing in Articles 3 or 13 guarantees any employee a forty-hour week. The Company asserts,

moreover, that the scheduling objected to here was done in the same manner in May of 1980 without Union objection.

The Union answered that the sequential employees considered filing a grievance in May of 1980 but, upon realizing that some nonsequential employees who would have been laid off had less than two years' service and, therefore, would receive no SUB, decided not to complain in order to avoid that loss to the junior, nonsequential employees. Thus, says the Union, that situation is not available for Management's use here as a constituent of a practice or as an example of Union acquiescence in the Company's present construction of Section 9 of Article 13.

The Company says that each twenty-turn week, or higher, justifies its use of the four-crew arrangement for two consecutive weeks that follow. That was done, with only one exception, but even that exceptional week, the one occasion of a third consecutive week in the Conditioning Sequence, the Company says, contained no violation of the Agreement, since in that week no nonsequential employees worked in the sequence.

Management contends that the Inland Arbitration Awards (463 and 515) relied upon by the Union are not applicable here, since those issues allegedly were not precisely the same as the issue here and since both arose under and are based on language in the 1960 Agreement, which is not the same as the controlling language of the 1980 Agreement.

In response to the Union argument from Section 1 of Article 13, to the effect that promotional opportunity, job security in force decreases, and reinstatements after layoffs should merit consideration in proportion to length of continuous service, the Company replies that the department superintendent's option results from the specific provision of Section 9, and it says there is a widely recognized rule of contract interpretation that says specific language is controlling over general language, such as that of Section 1 of Article 13. The Company says the same argument would deal with the Union's reliance on Section 3 of Article 13, which determines the way by which separate seniority sequences are to be established.

The Union said that the words "in such sequence" in the second clause of Section 9 show that the only ones who could be scheduled at a reduction to thirty-two hours were sequential employees. The Company disagrees and contends that the words "in such sequence" are adverbial, only, and are not adjectival. The Company argues, that is, that the three words describe where the employees referred to are at the time and do not describe who they are, that is, that they are only sequential employees. The Company says that is clinched by the phrase "or portion of sequence" that follows the words "in such sequence." The argument is that an employee "in such sequence" by definition is in a "portion of sequence" and does not need the last three words to qualify him as being within the sequence. That is said to make it obvious that the words "in such sequence" refer to employees, whether sequential or nonsequential, that happen to be working in that sequence when the Section 9, Article 13 reduction of operations occurs, and does not seek to differentiate between sequential employees and nonsequential employees. The Company urges that the parties just do not refer to an employee as having standing within a "portion of sequence." If an employee has standing to a job in a sequence, he necessarily has sequential standing and would gain no greater sequential standing by having it within a "portion of sequence." Thus, it is said that under the Union's interpretation of the words "in a sequence" would make the words "or portion of sequence" worthless, which would violate another elementary rule of contract interpretation, requiring that construction to be followed which would allow all words in an agreement to have some meaning.

The Company argues, moreover, that when the parties meant to limit scheduling in a sequence to those employees who had sequential standing, they have said so more clearly, as paragraph 13.48, where it is said that, if operations drop below fifteen turns, hours of work where practicable shall be reduced to not less than thirty-two before anyone with standing in a sequence is displaced therefrom. The argument is that, if the parties had meant that result in 13.47, they would have expressed it as they did in 13.48.

The Company alleges that the purpose of the option to continue use of four crews for a two-week period when operations fall back from twenty turns a week to sixteen and more is to maintain crew integrity during those periods, so as to promote efficient operations. Twenty-turn operation is perfect for four crews, with each working five turns a week. That requires use of some nonsequential employees, however, since there probably are not enough sequential employees, and in order to avoid paying overtime. Management says that arrangement allows employees and their supervisor on each crew to become familiar with each other and with their special skill and peculiar likes and dislikes. Moreover, car pools and other peripheral arrangements develop, as does the advantage of employees' working together on a group incentive.

When operation drop below twenty turns a week, however, the symmetry of a four-crew scheduling arrangement is destroyed, since there is more work than three crews can handle at straight time and less

than will give a fourth crew five turns. One alternative is to cut back sufficient employees who had been working in that sequence, so that the remaining employees all get five turns, with whatever "extra" turns exist being filled with nonsequential employees. That necessarily would break up the crews, however, and Management says that would not be efficient and is not necessary because of the department superintendent's option under Section 9 of Article 13 to keep the fourth crew for two consecutive weeks. After the two weeks, all crews must be broken up, and Supervision would schedule so as to avoid overtime, older employees would get five turns, applicants would fill in at the bottom, and employees would wind up on different turns.

The other alternative is to retain four crews, even at sixteen to nineteen turns a week, with most employees getting five turns and some on the fourth crew getting only four. That is what the Company did here, with the result that some employees happenstance, only four turns, while some of the nonsequential employees got four or five turns.

The Company explained that an applicant (nonsequential employee) can become established in a sequence, so as to become a sequential employee, by working thirty turns of permanent vacancies in a sequence. Prior to the 1977 Agreement, turns above fifteen a week were considered to be permanent vacancies, so that applicants assigned to fill out turns above fifteen on a fourth crew became established in the sequence after working thirty such turns. One result of that was a fourth crew often was made up of all or largely all sequential employees, so that fourth crews could be "established."

The parties saw that as carrying improper consequences in some situations, especially when administered with plant seniority dates, and in their 1977 Agreement they provided that such turns would be considered as temporary vacancies. Thus, applicants working turns above fifteen to fill out a fourth crew in a sequence would not, solely by that route, become established in the sequence. Thus, with exceptions, after 1977, employees working on fourth crews ordinarily were more and more often all or largely all nonsequential employees (applicants). Thus, thereafter fourth crews ordinarily could not be "established." There were fourth crews, but they were largely composed of nonsequential employees and, therefore, were not "established." The result was that upon dropping down to turns below twenty but above fifteen, the fourth crew would have been broken up because the nonsequential employees would be backed out.

While those different provisions were being administered and then changed, the department superintendent's option to schedule thirty-two hours for two weeks arising from paragraph 13.47 was in the Agreement and was employed, and that provision was not changed in 1977 when the Agreement was changed to make turns above fifteen temporary ones.

The Company says that perhaps before 1977 and certainly afterwards, it was necessary to use applicants to fill out a fourth crew at twenty turns, because there always are slots to fill for employees absent on vacations and for illness and such. Applicants thus would be on the bottom jobs.

Accordingly, at less than twenty and above fifteen turns, after reducing from twenty, sequential employees cannot be scheduled for five turns, using applicants only to avoid overtime, and still keep the four crews together. On a sixteen-turn operation, four crews can be kept intact, but only if all employees, sequential and nonsequential, work only four turns.

That reflects the present dispute. The Company kept four crews upon going down from twenty to nineteen and eighteen turns, so that all employees, both sequential and nonsequential, had at least four turns. The Union insists that the reduced operations should have been manned by first assuring sequential employees of five turns and then assigning whatever turns were left to nonsequential employees. That would have broken up the four crews.

In essence, the Company says it agrees with the Union position that sequential employees are entitled to forty hours in preference to nonsequential employees, except in overtime-avoidance situations and except also for the present situation of the superintendent's option under paragraph 13.47.

The Union contends that the Company argument about crew integrity is exaggerated, in that an employee could be scheduled in one crew one week and in another the next week as, for example, to fill a vacancy on a higher job in another crew, according to his seniority. That move would create another vacancy, which might cause a similar change, and so on. The Company agreed that employees would switch turns also, with Management permission, for personal reasons, and upon going on and returning from vacations and in case of illness. The Union thus urges that crews are not as frozen as the Company pretends.

The Union stresses also that, while the incentive for the Stocking Sequence was a group incentive, that for the Conditioning Sequence was an individual incentive.

Retired, former Administrative Supervisor at the 12" Mill Spak had thirteen years in that function and as such was responsible for scheduling and maintaining seniority lists. He said he was familiar with

scheduling traditions in the Stocking and the Conditioning Sequences. Those sequences often worked at a twenty-turn level and used four crews to do so. There were nonsequential employees on the bottom jobs of the fourth crew and some nonsequential employees at bottom jobs in each crew. He said four crews could not be staffed, using only sequential employees.

The witness said in the spring and early summer of 1981, these sequences used four crews at twenty turns and, when operations dipped below twenty but above fifteen, the department superintendent continued to maintain four crews for two weeks, so that one of the four crews would work only four turns. Everybody in that crew, some sequential and some nonsequential employees, would have only four days. The other three crews would work five turns. The crew that got only four turns one week would rotate, so that a different crew would have only four the second week, and the same crew thus did not have two consecutive four-day weeks. For the third week, if the fourth crew was retained, Management made sure that all sequential employees had five turns, or the fourth crew would be disbanded.

Spak noted the nineteen-turn operation for the weeks of May 11 and 18, 1980, using four crews, so that some nonsequential employees were getting four turns while sequential employees were also getting four. He said that arrangement was more or less the way things had been scheduled in those circumstances in these sequences during his time there from 1969 on.

Retired, former Administrative Supervisor of the 10" and 14" Mills LaBarge was responsible for scheduling those and other operations from 1956 to 1982. He said he often scheduled twenty-turn operations with four crews, some of whom necessarily were nonsequential employees (applicants). There apparently was considerable use of four-crew schedules at twenty-turn operations in the late 1970s but few or none in the 1980s because there was not sufficient business to require twenty-turn operations then. He said when operations would go from twenty to fewer turns per week, but more than fifteen, he would retain the fourth crew for two weeks, manned necessarily with some applicants, and only if operations stayed under twenty for a third week would he disband the fourth crew. He did that in order to maintain integrity of the crews for two weeks. LaBarge said he did that on many occasions in the 1970s.

The Union doubted the relevance of things done at the 10" and 14" Mills to questions of how they should be done at the different, 12" Mill.

FINDINGS

The Inland Arbitration decisions relied upon by the Union no longer are controlling on this point. They were decided under different language of the 1960 Agreement, which had no provision for anything like this department superintendent's two-week option to retain a fourth crew in certain circumstances under the governing language of the 1980 Agreement.

Those decisions still are accurate in their general suggestion of a clear bias of Article 13 in favor of sequential employees as against nonsequential employees. Indeed, the Company here expressly agrees with that bias. It agrees, that is, that sequential employees in general are entitled to forty-hour weeks before nonsequential employees get any hours. But the Company stresses that that generality is subject to two specific exceptions: (1) its right to use nonsequential employees in order to avoid payment of overtime (The Union agrees as to that exception.) and (2) its right under paragraph 13.47 to keep using a fourth crew for two weeks at sixteen to nineteen turns following reduction from twenty-turn operations in the covered sequences.

Decision thus is governed by the language of 13.47 and, if there could be reasonable doubt on that point, by the way it has been administered by the parties for some years.

It should be noted that what is discussed or decided here deals only with operating levels below twenty and above fifteen, in situations that had been at twenty turns and four crews, in multi-occupational sequences in the noncontinuous operations covered by paragraph 13.45.1. At twenty turns or more, there is no problem, and at fifteen or fewer, manning and scheduling must be done according to later paragraphs of Section 9.

Paragraph 13.47 says that in reducing operations within the covered units employees first will be stepped back within a sequence toward a fifteen-turn level in accordance with their standing. That language makes clear that in a sequence or portion of a sequence that had not been at twenty turns or had not been manned by scheduling four crews, employees would have to be stepped back toward a fifteen-turn level in accordance with their standing. In that situation, nonsequential employees would have to be stepped back to a certain extent, since they have no standing.

But that is not this case. Here these covered, noncontinuous operations had been at twenty turns and had been manned by scheduling four crews. Thus, the exception to 13.47 applies on its face and entitles the department superintendent to schedule employees in those sequences for not less than thirty-tow hours for two consecutive weeks following the twenty-turn week. Should operations go down to fifteen a week,

employees would have to be displace from the sequence to a fifteen-turn level and scheduled on a three-crew basis. That analysis seems to show reasonably clearly that the superintendent's two-week option as exercised here was in accordance with the controlling language.

The Union disagrees, however, and urges that the phrase ". . . in such sequence or portion of sequence . . . ," means that the only employees then working in the sequence (who necessarily will be sequential employees and some nonsequential employees) who may be scheduled thereafter are sequential employees, and that those words mean that the nonsequential employees must be displaced, at least enough of them to ensure first that all sequential employees will have five turns, and only thereafter could nonsequential employees be scheduled for whatever few turns would be left unfilled. The Union thus urges that even in the exceptional case of the 13.47, two-week option, only sequential employees have rights to any work, until at least all of them have five turns.

But that argument, based as it necessarily must be on lore from older arbitration decisions and general reflections from other provisions of Article 13, cannot evade the reasonably clear thrust of the specific exception of the department superintendent's election of 13.47 to continue a fourth crew for two weeks in the circumstances. That is, without the superintendent's two-week, fourth-crew election in paragraph 13.47, the Union would be right in urging that sequential employees come before nonsequential employees. Why have sequences and sequential standing unless "natives" were in general to be favored over "foreigners"? But, that general seniority principle cannot be applied in the face of the specific, contrary exception in 13.47.

The phrase ". . . in such sequence or portion of sequence . . . . ," obviously tells where the employees are and not who they are. Thus, the employees being described there very likely will include both sequential and nonsequential employees who happen to be working in this sequence at that time.

Moreover, as a practical matter, the evidence shows that four crews probably cannot be set up without use of some nonsequential employees. The parties obviously recognized that and nevertheless negotiated the department superintendent's option to continue four crews for two weeks in certain circumstances. That seems to be a clear signal that there was no need first to displace the nonsequential employees or to assign them only to whatever turns might be left after sequential employees were assured of five turns.

If nonsequential employees would have to be displaced immediately upon going below twenty turns, the four crews would have to be broken up, which would read the 13.47 option out of the Agreement.

All this appears sufficiently clear from the language of the provision, standing alone, but if doubt be seen or generated about that, it surely would be dispersed by the clear Company testimony, to the effect that in many identical situations in the past years these and other sequences have been scheduled in the very same way, with no evidence that anyone thought there was anything wrong with that.

Nothing in the immediately preceding sentence relies in any way upon the May-1980 scheduling referred to by the Company and perhaps answered by the Union. It is not necessary to rely on those weeks, since the uncontradicted Company evidence shows there were plenty of other such weeks. Moreover, nothing said here relates at all to the possible fate of this or like situations under the 1983 Agreement, which is not involved here.

Consequently, since in the circumstance of this case the scheduling objected to was done within the permission of the exception language in paragraph 13.47, it did not violate the Agreement, and the grievance will be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator