Award No. 819
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 4-T-7
Arbitrator: Clare B. McDermott
Opinion and Award
January 4, 1990
Subject: Vacation Scheduling--General Question of Vacation Weeks Allowed Each Month.
Statement of the Grievance: "The Company is violating the CBA by restricting the 1990 Vacations for the following sequences:
Auxiliary Sequence
Janitor Sequence
Crane Sequence
Labor Leader Sequence
Mobile Equipment Sequence
Furnace Sequence
Pit Sequence
Conductor Sequence
Mold Yard Sequence
Ingot Clerk Sequence
Caster Sequence
TGA Sequence
Withdrawal Sequence
Labor Sequence
"Relief Sought Cease and desist, schedule vacations as in the past by sequence.
"Violation is Claimed of Article 3, Section 1, and Article 12, Section 6."
Agreement Provisions Involved: Article 12, Section 6 (paragraph 12.18) of the August 1, 1989 Agreement.
Statement of the Award: The grievance is denied.

Chronology

Grievance Filed:	12-6-89
Step 3 Hearing:	N/A
Step 3 Minutes:	N/A
Step 4 Appeal:	12-12-89
Step 4 Hearing:	12-11-89
Step 4 Minutes:	12-12-89
Appeal to Arbitration:	12-13-89
Arbitration Hearing:	12-14-89

Appearances
Company
R. V. Cayia -- Section Manager, Union Relations
J. Mareta -- Manager, #4 BOF and #1 Slab Caster Dept.
J. Bradley -- Section Manager, Furnace & Auxiliary, #4 BOF and #1 Slab Caster Dept.
B. Smith -- Project Representative, Union Relations Dept.
Union
J. Robinson -- Arbitration Coordinator
M. Mezo -- President
Marvin Thompson -- Griever
Jim O'Donahue - Asst. Griever
Raul Salinas -- Steward
Rick Bates
Kevin Lambing

James Shumaker
Freddie Latham

BACKGROUND

This grievance from #4 BOF/#1 SC Department claims violation of Article 3 and Article 12, Section 6, of the August 1, 1989 Agreement in Management's adding a monthly quota to the vacation-scheduling plan for 1990, in addition to the weekly quota used in the past.

There are about 600 employees in the Department. With only a weekly vacation-scheduling quota imposed within the seniority sequence in the past, the Company claims that during the bulge of vacations thus allowed in the heavy vacation times--summer months and Thanksgiving and Christmas great numbers of trained, sequential employees were off and were replaced by less well trained, nonsequential employees, so that the skill level of employees working on sequential jobs was not as high as it was with sequential employees at work. Thus, Management sought to level out those vacation peaks, while still addressing employees' vacation needs and rights.

The Company said three specific problems arose from the heavy vacation bulge. They were in the field of safety; operating efficiency; and depletion of the Department Labor Pool to the extent that there were not enough employees in it to accomplish many of the massive outside clean-up projects (track cleaning, spray painting, and steam cleaning) that can be done only or better during milder weather.

Management contends that the problems caused by those three situations created more than minimal interference with plant operations and, therefore, that it was entitled to avoid them and that the monthly quota has done so in a way that is well within its authority under paragraph 12.18, that is, to allot vacation times with consideration for individual employees' wishes, in accordance with their relative length of continuous service, so that they ". . . will cause the minimum interference with plant operations. . . . ."

This vacation plan has three major attributes. The weekly vacation quota is determined by dividing the total vacation liability in a seniority sequence by fifty-two, with the quotient rounded up to the next higher whole number. That was done in the past, as well, but without the advantage of the rounding-up factor.

The weekly feature of the plan would operate as follows in the Conductor Sequence, for example. There are 30 weeks of vacation liability and 5 employees in the Sequence. Thus, 30 divided by 2 = .58 which, rounded up to the nearest whole number, allows one of the 5 sequential employees to be on vacation each week.

A difference between the past plans and that for 1990 is seen in the rounding-up feature of the latter. In the past, if there were, for example, 57 weeks of vacation liability in a sequence, that would be divided by 52 and would result in a quotient of 1.1, and only 1 employee was allowed to be on vacation in 46 weeks of the year, with 2 off in 5 weeks. The plan for 1990 would use those figures and round the quotient up so that 2 employees could be on vacation in all 52 weeks.

The monthly feature operates differently from the weekly one and is determined by dividing the total vacation liability in the sequence by 12, with the quotient rounded up to the nearest whole number of vacation weeks that may be taken in any one month. This feature is new for the 1990 vacation-scheduling plan and is the sole point in dispute here.

It would work as follows in the Conductor Sequence. The 30 weeks of vacation liability divided by 12 would come out to 2.5 which, rounded up to the nearest whole number, would allow 3 vacation weeks to be taken in each month. That would eliminate or reduce the bulge of vacations in the summertime.

There is one more feature. If employees want to group their vacation weeks but that grouping would exceed the monthly maximum, Supervision says it will allow the monthly quota to be ignored for that purpose. An example of that exception would occur if an employee were entitled to four vacation weeks in 1990 and only two per month were allowed by the monthly quota in his sequence. The Company assures that that employee would be allowed to take all four vacation weeks or even three of them, even though that would exceed the monthly quota. Management says that exception will be allowed to exceed the monthly quota but not the weekly one.

The pertinent vacation data are in the following table

"SEQUENCE	NO. OF TOTAL WEEKS OF VACATION	NO. OF EMPLOYEES IN VACATION UNIT	WEEKLY QUOTA	MONTHLY QUOTA
Conductors	30	5	1 employee	3 weeks
Ingot Clerks	21	5	1 "	2 "
Withdrawal	124	26	3 "	11 "

Labor	84	26	2 "	7 "
Cranes	206	48	4 "	18 "
Janitors	31	8	1 "	3 "
Labor Leaders	26	6	1 "	3 "
Mobile Equip.	94	24	2 "	8 "
Pit	176	42	4 "	15 "
Furnace	132	28	3 "	11 "
Caster	237	52	5 "	20 "
T.G.A.	15	3	1 "	2 "
Mold Yard	92	19	2 "	8 "
Auxiliaries	92	24	2 "	8 " "

The Company explains also that the monthly-quota feature of the plan would affect only the smaller seniority sequences, that is, those with less than thirty-six weeks of vacation liability. Fourteen seniority sequences were listed in the written grievance, and their total vacation liability for 1990 is 1,360 weeks. The Company insists, however, that only five of the Sequences would be affected by the new monthly quota. They would be the Conductor, Ingot Clerk, Janitor, Labor Leader, and Tundish Gate Assembler Sequences. That result would follow because, if there were 37 or more weeks of vacation liability in a seniority sequence, the quotient arrived at by dividing that number of weeks of vacation liability by 12 would exceed 3 by some fraction, and any such fraction would require that it be rounded up to 4, the next higher whole number, so that now 4 vacation weeks per month will be allowed.

As to the first problem said to result from the vacation bulge in the summer months, the Company argues that, with more severe weather conditions in the winter, one would expect that the accident frequency would be higher then. Its data is to the contrary, however, and shows that the number of accidents generally rises in the summer months. It attributes that to the higher level of nonsequential (less experienced) employees' working in the summertime. Company Exhibit 2 graphed Department accidents and vacations by month for 1988, and September had most accidents and July the highest number of employees on vacation. Company Exhibit 3 graphed the Department's average safety performance for 1987 and 1988, together, and July had the greatest number of accidents and August the most vacation weeks. The Company argues that those data are causally related. The Exhibits covered statistics for the fourteen Seniority Sequences in issue here.

The opinion of Section Manager Bradley was that inexperienced employees have more accidents because they are not as familiar with the job duties and thus are so intent on performing them well that they are inclined to ignore safety hazards and surroundings. Bradley explained that the cumulative accident figures go back only to 1987 and, therefore, that nothing could be exhibited for earlier years.

The Company's second suggested problem associated with greater numbers of sequential employees on vacation, replaced by less experienced, nonsequential employees, is the alleged poorer employee performance that results. That was graphed in Company Exhibit 4 as the average number of unplanned turn-arounds, which counts the number of times the Caster shuts down in unplanned fashion, including breakouts. The Company says that kind of event is one that affects the entire shop and not just a minor part of it. When average unplanned turn-arounds are compared with average vacation weeks per month, for 1986, 1987, and 1988, both were highest in August. The Company thus concludes that more operating problems arise on the average when greater numbers of less experienced employees are working the jobs.

The third problem said by the Company to arise from vacation bulges in the summer was that of excessive depletion of the nonsequential employees from the Department Labor Pool while serving as vacation replacements for vacationing sequential employees, to the extent that there are not enough left to handle the large labor projects of track cleaning, spray painting, and steam cleaning. All that is outside work in unsheltered places, which is done better during the summer. Management says it takes a week or two to train nonsequential employees on these jobs, counting a day for orientation and one for safety considerations. It claims that such training must be constantly repeated because the Yard Department Pool is so fluid and changes so frequently. By the time an employee would become trained, the chances are that he would be called back to his own department or would be bumped out of the job in this Department.

The Company then stresses that, at the present stage of development and implementation of this 1990 vacation-scheduling plan, there is no senior employee who has been denied a vacation week of his choice because it was allotted to a junior employee.

The Union is not impressed by the Company's "blocking" aspect of the 1990 plan, that is, Management's commitment to allow the monthly quota to be exceeded by an employee's desire to take two or more weeks

of his vacation entitlement in one block, even though that would have more vacation weeks in a month than the monthly quota otherwise would allow. It says that the "blocking" exception, argued by the Company here as a generous feature, is far from that. It is allegedly created by the added monthly quota of vacation weeks. The Union argues also that it is senseless to have an exception which consumes the rule. Even applying the "blocking" exception, the Union notes it would do no good for a Conductor entitled to five weeks of vacation who wanted to take one week in July and the other four in the wintertime, if other senior employees already had taken three weeks in July. He would have to take two or more weeks of his vacation entitlement in one block in July if he were to benefit from the "blocking" exception.

The Union argues that a week in this Agreement runs from Sunday to Saturday. Using that definition, the Union claims that some 1990 months have five weeks, because they have five Sundays. With the monthly quota applied in, for example, the Conductor Sequence, only three vacation weeks would be allowed in those five-week months, to the detriment of Conductors, when compared to past years.

The Union argues that it is contractually wrong to use a monthly time period for vacation-scheduling purposes, since a calendar week is the only time period referred to in scheduling work in Article 10 and vacations in Article 12.

The Company answers that nothing in either Article or any other provision of the Agreement prohibits use of a month for that purpose. Its use eliminates or at least reduces the extreme summer bulge of vacations, a Management goal allegedly blessed by Award No. 61 in 1970.

The Union contends also that Company arguments about necessity to train inexperienced nonsequential employees should have no weight in some sequences, Janitors, for example, where no or very little significant training is necessary.

The Union suggests that the fact that the greater number of accidents on the average occurs in the summer months could as well be attributed to the necessity to work in the extreme heat of the furnace, pit, and casting surroundings, while wearing heavy protective equipment, and that it might not be caused at all by having inexperienced employees on the jobs. The Union thus argues that the number of vacations is only one factor in a safety assessment, which really results from a vector of various other forces. It urges that its Exhibit 4 (based on Company data) shows also that peaks and valleys of unplanned turn-arounds are different in each year.

As to the alleged inability to get some large, outside clean-up projects done in the summer months, because of undue reduction of the Department Labor Pool, the Union says that is more accurately attributable to the Company's decision to keep the Pool at a level that is inadequate for performance of its supplementary function. It is noted also that there are well over one thousand employees laid off from the plant who could be recalled to work on and complete those projects.

The Union stresses also that it now takes about ten years' service to hold in the Labor Pool, which allegedly means that all those employees have substantial familiarity with steel-mill conditions, and that no great training would be required in any event to familiarize employees with track clean-up work or the safety hazards associated with it.

The Union notes also that the Company's projection for 1990 is that operations will be at a rather even level throughout the year, with no special months of significantly increased activity. It thus asks what the difference would be for this purpose between a replacement employee in June and one in July.

The Union contends that Management's assertion that it always will entertain reasonable employee requests for changes in the vacation schedule is not and may not be considered as a part of this plan because not stated in its written program.

The Company replies that it did not write that feature in the plan because it always has done that and simply thought it would continue even though unstated.

Union witness Shumaker, who works often as a Labor Leader, said employees new to the Labor Sequence get no training at all, not even orientation. He tells the new employee (Laborer) what to do, and it is the witness's responsibility to see that it is done safely. He said the large summer projects could be done by recalled employees.

As it has in other vacation-scheduling disputes, the Company argues here that the language of paragraph 12.18 pinches less on its freedom in scheduling vacations than does the contractual language of other companies in the industry. It stresses that the present language says that Management shall allot vacation times, subject to employee desires and seniority, ". . . so that it will cause the minimum interference with plant operations. . . ." The Company defines "minimum" as the least quantity possible. The Union says that for practical purposes the two contractual tests are identical.

The Union says the vacation-scheduling plan can be broken down to two parts: the Company's desire to avoid summer-bulge problems and the resulting reduction in the chances that employees will get all their vacation wishes because some weeks will be closed off in a month, especially in sequences with fewer employees and, even in the larger sequences, as to months with five "weeks." The Union says, finally, that this plan is a mechanically rigid one, unsupported by the facts or by Article 12. It requests that the grievance be sustained and remanded to the parties for remedial purposes, so that they may work out a better plan.

This Opinion is issued to explain the Award sent to the parties by telegram on January 2, 1990.

FINDINGS

The arbitration process sometimes can make helpful declaratory judgments as to future events, when carefully crafted to be as specific as possible. That the events are all in the future is not necessarily a bar. If, when and if they do occur, they will occur in a certain way, a meaningful decision can be made as to them under the terms of the Agreement.

But, little of that is the case here. Little has happened so far, since it is not known how future events will fall out. The actual vacation-scheduling scenario could happen one way or another or a number of vastly different ways. Thus, no specific contractual question can be decided because none has happened, so far.

Accordingly, the statements in a number of arbitration decisions in this relationship, to the effect that vacation-scheduling matters can be decided sensibly only on the basis of the specific fact setting bearing on the request of a senior employee or group of employees for a given time and its denial by the Company for a given reason cannot be used here. In such a setting the Company must show that its right to minimize interference with plant operations justifies its demand that the employees be at work then. No such specific problems appear to exist as yet.

Thus, the only issue that could be met at this stage is that of the Union's general challenge to the Company's general quota of vacation weeks per month. Hence, speaking only on the basis of the generalities argued here, and on the present, immature state of this record, it must be held that the monthly quota does not run afoul of anything in Article 12. Even that decision is limited to the present circumstances and well may be overcome by later events that may arise in the future when particular employees request given weeks and Management does or does not allot them as requested, in competition with requests of more senior employees and its right to minimize interference with plant operations. Thus, the limited benefit of the present Award can be no more than a declaration that, as presently situated, the 1990 vacation-scheduling plan does not violate the Agreement.

It is true that the Company's statistics of accidents and operating inefficiencies during the vacation bulge, when graphed against the number of vacationing employees and vacation weeks, are not conclusive. But they do show a trend that is sufficient to support Management's desire, bottomed on its 12.18 authority, to eliminate or substantially reduce the heavy bulge of vacations in the summer months. That goal is not barred by anything in the Agreement.

Consequently, the grievance must be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator