IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
WEIRTON PLANT

And

ArcelorMittal Case No. 100

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 2911, USW

OPINION AND AWARD

Background

This case from the Weirton Plant concerns the Union's claim that the Company violated Article 5, Section E.1. when it laid off Grievant Justin Groch and retained employees with less seniority. Grievant's continuous service date was October 9, 2017. At the time of his layoff during the week ending August 24, 2019, Grievant was a production employee working as a reeler in the tin mill plater department. The case was tried in Weirton, West Virginia on December 12, 2019.

Brian James, General Manager, testified that Weirton operates a pickle line and a tin mill, with a workforce of about 750 employees during normal operations. Demand for tin products dipped precipitously in the second half of 2019, James said, in part because heavy rains in various parts of the country affected the demand for cans. In total, James said the Company laid off 111 production employees and support personnel, including Grievant. The Company did not lay off any craft maintenance employees, including those in the tier 1 training program. James said there were various reasons to retain all of the craft employees. The Company viewed the

reduction in business as temporary. Thus, it needed to maintain all of the equipment for when orders returned. Also, the equipment is old, increasing the level of maintenance required. In addition, James said craft maintenance employees are in demand. They can be hard to hire and difficult to retain. The Company feared the employees would simply take their skills elsewhere if they were laid off. Finally, the Company has an investment in their training.

James explained the craft training program, in part by reference to Article 5, Section E.10.d, which says that permanent craft training vacancies are filled by plant-wide bidding among qualified employees. Employees who want to enter the training program take an exam called the Ramsay test. There are different Ramsay tests for maintenance technician mechanical (MTM) and for maintenance technician electrical (MTE) craftsmen. James said employees can ask to take the Ramsey test at any time. As explained at the hearing, an employee who scores an 84 or above on the Ramsay mechanical test is eligible to enter directly into the tier 1 training program. Employees who score between 50 and 84 take remedial training, called tier 2. Once the remedial training is completed, employees apparently take the Ramsay test again and, if they score 84 or above, can enter into the tier 1 program, depending on their seniority. However, qualified employees do not begin training immediately. Rather, the Company waits until it has 12 eligible employees and needs additional craft personnel. According to James, tier 1 employees take classroom training a week at a time, with each week of classroom work followed by about four weeks of on-the-job (OJT) training. They are also required to pass 9 factor tests. The program takes about a year to complete. James said during OJT, employees perform actual craft maintenance work.

There is no dispute that at the time Grievant was laid off the Company retained tier 1 maintenance trainees who were junior to Grievant. The Union relies on Article 5.E.1, which says:

> 1. Seniority Status of Employees
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> a. The parties recognize that promotional and other in-plant opportunities and job security should increase in proportion to length of continuous service and that the fullest practicable consideration shall be given to continuous service in such cases.
>
> b. ...
>
> c. In all cases of promotions, decreases in force and recalls after layoffs, the following factors shall be considered:
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> (1) Ability to perform the work and physical fitness; and
>
> (2) Plant Continuous Service (Plant Service)
>
> Where factor (1) is relatively equal, Plant Service shall be the determining factor

The Union focuses on the last sentence of subparagraph c. Grievant had more plant service than some retained employees and, the Union claims, even though he was not in the tier 1 training program for mechanical craftsmen, his ability to perform craft work was at least equal to that of the retained employees.

Grievant served several years in the Air Force, where he was trained in aerospace maintenance. He submitted a copy of his training records and some performance evaluations, all of which were official military documents. Grievant said his work included aircraft maintenance, welding, hydraulics, avionics, and structural repair. His evaluations rated him as highly skilled and said that he maintained aircraft valued at more than $5 billion. He worked in some mechanical maintenance-related jobs following his time in the Air Force. When the Company contacted him in 2017, Grievant took the Ramsay test for electrical maintenance

employees. The third step minutes say Grievant was offered the opportunity to take either the Ramsay electrical or Ramsay mechanical test, and he chose electrical. Grievant's score on the Ramsay electrical test did not qualify him for either the tier 1 or remedial training programs. Grievant said he was told there were no mechanical maintenance positions available at that time. Thus, he was hired into the tin mill as a production employee. Although he has trained on other production functions in his line of progression (LOP), his incumbency is as a reeler. Grievant said he has asked on multiple occasions to take the Ramsay test for mechanical maintenance employees, but was always told "not at this time." Grievant testified that he wants to be reinstated and to return to his bid position as a production employee. He said he is not asking for a permanent position as an MTM. However, he is willing to take the Ramsay test if necessary.

On cross examination, Grievant said he had never taken the Ramsay mechanical test or been in the mechanical training program. Grievant acknowledged that he sent an email message to Human Resources Manager Dana Meager on August 27, 2019 detailing his military background as an aircraft mechanic and asking to take the Ramsay mechanical test. This was after the grievance was filed on August 23, 2019. Grievant said he spoke to Meager about the issue prior to August 27 and she asked him to send the letter.

Mike Vitello is an MTM currently working as a training coordinator. He identified a weekly work schedule from mobile maintenance dated October 21, 2017. The exhibit listed three "temporary" employees who were put into the mechanical group to fill vacancies for down day work. None of the three, Vitello said, had taken the Ramsay mechanical test, had gone through any training modules, or had any qualifications as MTMs. Rather, they were hired and put directly to work with mechanics. According to Vitello, the employees had similar qualifications to Grievant's in their previous employment. At least two of the employees

subsequently started remedial training after taking the Ramsay test. Vitello testified that Grievant could have been placed in a similar position at the time he was laid off, and assigned to work with top rated MTMs. On cross examination, Vitello said the three employees were hired into the maintenance area; they were not production employees who were moved to maintenance.

Mark Glyptis, Local 2911 President, addressed the Company's claim in the third step minutes that Grievant had not previously asked to take the Ramsay test. That was not true, Glyptis said; Grievant had asked numerous times and Glyptis had asked on behalf of employees, including Grievant. Glyptis said he even offered to pay for Grievant's Ramsay test. Glyptis also said the Company was aware of Grievant's Air Force background prior to his layoff. On cross examination, Glyptis acknowledged that he did not ask the Company to allow Grievant to take the Ramsay test until after the grievance was filed. He said he had asked for other employees prior to the grievance, but not for Grievant.

Plant Manager James pointed to an exhibit showing employees by length of service. There are four employees who have the same hire date as Grievant, all of whom are in the tier 1 mechanical training program. James said all employees had the opportunity to take the Ramsay mechanical test. The four employees with the same hire date as Grievant took it, but Grievant did not; rather, Grievant elected to take the Ramsay electrical test. At the time of the layoff, James said, the tier 1 trainees had completed 7 of 9 required training modules. They are expected to finish the program in January 2020. James said during the second and third step grievance meetings, the Union never claimed that Grievant had asked to take the Ramsay mechanical test, or that he had been denied the opportunity to take the test when the other employees who were hired the same day took it. Taking the Ramsay test was mentioned only as

a possible settlement of the grievance. James said if Grievant had asked to take the test when they were putting together the last class, he probably would have been allowed to do so, as were others hired at the same time as Grievant. The Company does not need additional craft employees at this time, James testified, and it would not allow Grievant to perform the work the tier 1 employees are doing without training.

The Union says the case involves laying off Grievant to the street while less senior employees were retained to perform work he could have done. There should be no question, the Union argues, that Grievant was qualified to perform the work. His Air Force training and experience qualified him as a journeyman aircraft mechanic. Thus, Grievant had both greater seniority and the ability to perform the work, the criteria established under Article 5.E.1. The Union also notes that Section E.1.a. says that "the fullest practicable consideration shall be given to continuous service" in cases of job security. The Union points to the three employees who were hired off the street to assist MTMs in 2017, none of whom had even taken the Ramsay test. Grievant could have performed the same kind of work in lieu of layoff in 2019. Although the Union insists that the evidence to return Grievant to work is compelling, in the alternative it asks that the Company be ordered to give Grievant the Ramsay test for mechanical technicians. If Grievant passes the test, then the Union says he should be reinstated with a make-whole remedy. The Union says seniority is the bedrock of the labor agreement and that no aspect of seniority is more important than protecting employees against layoff. The Union argues that Grievant is entitled to that protection in this case.

The Company emphasizes the fact that Grievant is a production employee and is not part of the tier 1 training program. The ultimate question, the Company says, is who has a claim to craft work. The reduction-in-force language, the Company contends, applies by jurisdiction and

LOP. Thus, Grievant only has a right to claim jobs involving production work he is qualified to perform. The Company notes that Grievant made no effort to take the Ramsay mechanical test until he was advised of the layoff. Although he testified that he had asked to take the test many times, he did not say he had made the request prior to the layoff. But, the Company says, nothing in the contract says the Company has to destroy the jurisdictional boundaries between craft and production LOPs by giving a production employee a chance to qualify for craft work after notice of a layoff.

The Company also questions Grievant's claim that his outside experience qualified him to do the work performed by tier 1 trainees. Although the Company considers outside experience, that merely gives an employee the right to "knock on the door" to the craft training program. Employees are required to complete the training program even if they have some mechanical craft training in other employment. But Grievant did not opt to take the Ramsay mechanical test when he was hired and he did not ask to take it afterwards, except as a way to avoid being laid off. At the time of the layoff, the tier 1 trainees had completed 7 of the required 9 levels of training and were performing actual craft work on Company equipment, something Grievant had never done. In addition, the Company pointed out that Grievant testified he wanted to return to his production job. But the Company has no work available for him in production. Finally, the Company says there is no contractual provision for an order to allow Grievant to take the Ramsay test.

Findings and Discussion

I need not decide in this case whether a reduction in force can be segregated into craft and production LOPs. Rather, the key inquiry is whether Grievant had the ability to perform

craft work.[1] If he did not, then he could not claim he was improperly laid off, even though some junior employees were retained in the tier 1 maintenance training program.

In cases of reduction in force, the sole test is not seniority. Rather, as reflected in Article 5.E.1.c., seniority controls only when the respective employees' ability to perform the work is relatively equal. Grievant claims that because of his maintenance background in the Air Force he is at least as qualified as the junior tier 1 employees who were retained. There is no doubt that Grievant had significant mechanical training and experience in the Air Force, and I agree with Grievant's characterization of his performance reviews as "exceptional." But as typically applied, the ability-to-perform-the-work factor in Section E.1.c. means present ability. The USS-USW Board of Arbitration interpreted identical language in USS-48,215, and said "the Company was not obligated to train Grievant so she could bump a junior employee in order to avoid layoff."[2] That does not mean that no orientation or familiarization can ever be required when employees move into new jobs as part of a layoff. But the expectation is that when employees change jobs as a result of a layoff the Company's operations can continue, unimpeded by the need to offer any significant training.

I agree that Grievant's background is impressive and it is no doubt true that if he were placed in the mechanical training program he could advance rather quickly through the required

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[1] This was the finding of Arbitrator Richard Mittenthal in LTV Case No, 7-410, which the Company relied on. Although that case was decided in an era of more restrictive craft lines, it has some similarity to the matter at issue in the instant case. In LTV 7-410, apprentices sought to replace junior journeymen because of a layoff. The company claimed, in part, that apprentices and journeymen were in separate LOPs and that employees could exercise their seniority only within their LOP. But Mittenthal said the issue was whether the apprentices had relatively equal ability to perform journeymen work. He found that they did not and denied the grievance

[2] See also, USS-20,723, where the Board of Arbitration held, "[T]he Company is not obligated to provide training to enable the senior employee to establish relatively equal ability to that of a junior employee on the job, even if it has trained employees to fill vacancies in the past, nor is it required to place him on the job for a trial period."

steps. But despite his aircraft maintenance background, there is no evidence that the work Grievant performed in the service would allow him to transition easily into performing maintenance on the Company's equipment, something Grievant has never done. It is true that the tier 1 employees were still in training. However, by late August of 2019, they had been in the program for 8 months of the 12 month course, they had passed 7 of the 9 factor tests, and they were performing ordinary maintenance on the equipment. The Union had the burden of establishing that Grievant had the ability to step into that role without training, but Grievant did not testify that he had performed the same tasks on the same kind of equipment. The issue is not simply whether he was an experienced mechanic who had the ability to learn the job; instead, the question is whether Grievant would have been able to do the work immediately, with only a minimum of orientation or familiarization. I am not satisfied from the record that Grievant could have done so.

This finding also addresses two of the Union's other contentions. The Union introduced evidence that in 2017 the Company hired employees with some maintenance background (similar to Grievant's, one Union witness said) and had them assist MTMs without taking the Ramsay mechanical test and with no Company training at all. But that is not the situation that existed in August of 2019. Grievant was not seeking to replace new maintenance employees who had no training; instead, he claimed he had at least equal ability to employees who had already completed the bulk of the Company's maintenance training program. It is probably true that, had Grievant been allowed to move to maintenance in August 2019, he could have assisted other maintenance employees. But that isn't the point. Grievant wanted one of the jobs that existed in the maintenance department at the time and there is no evidence that there were any untrained workers, as there had been in 2017. The jobs held by less senior employees were tier 1

maintenance trainees and, if Grievant wanted one of those jobs, he had to show he was presently able to do that work. Similarly, there is no warrant for allowing Grievant to take the Ramsay mechanical test and then place him in the appropriate remedial training step. There is no evidence that any of the retained junior employees were so situated. Rather, they were tier 1 trainees, and to get their jobs Grievant had to show he could do their work. He did not. Thus, the grievance must be denied.

AWARD

The grievance is denied.

Terry A. Bethel

Terry A. Bethel, Arbitrator
December 27, 2019