

IN THE MATTER OF THE ARBITRATION)
)
 Between)
)
 ArcelorMittal Cleveland, LLC)
)
 and)
)
 UNITED STEELWORKERS)
 LOCAL 979)

OPINION AND AWARD

RONALD F. TALARICO, ESQ.
ARBITRATOR

Grievance No.: 0807

Case 112

GRIEVANT

Group Grievance

ISSUE

Incentive Plan

HEARING

August 18, 2020
Cleveland, OH

APPEARANCES

For the Employer
Patrick David Parker
Vice President
Labor Relations

For the Union
Patrick Gallagher
USW District 1
Sub-District Director

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on August 18, 2020 in Cleveland, Ohio at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses, and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

ARTICLE NINE – ECONOMIC OPPORTUNITY

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Section B. Incentive Plans

- 1. New incentive plans shall be designed to afford Employees the earnings opportunity generally available under existing plans. Modified incentive plans shall be designed to afford Employees the earning opportunity generally available under the plan being modified.**
- 2. The Company shall establish new incentive plans to cover newly created jobs. The Company shall also modify existing incentive plans where new or changed conditions resulting from mechanical improvements made by the Company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards impact the earnings opportunity provided under an existing incentive plan. In all other circumstances, existing incentive plans shall remain unchanged. Such plans shall be installed within ninety (90) days of an Employee being assigned to work on a new or modified job.**
- 3. Such new or modified incentive plans shall be established in accordance with the following procedure:**

- a. **The Company will develop the proposed new incentive plan.**
- b. **The proposed new plan will be submitted and explained to the Local Union Incentive Committee along with such additional Employees as the Committee shall deem appropriate. The explanation shall include all information reasonably required to understand how the new plan was developed. The Union shall be afforded a full opportunity to be heard with regard to the new plan.**
- c. **Should agreement on a new plan not be reached, the new plan may be installed and the Employees affected shall give the plan a fair trial.**
- d. **The Local Union Incentive Committee may file a grievance at any time from ninety (90) to 180 days from the date of installation of a new plan. Such grievance shall be filed in Step 2 of the grievance procedure and shall be decided on the basis of the standard referred to in Paragraph 1 above.**
- e. **In the event the Company does not install a new incentive plan on a timely basis, the Local Union Incentive Committee may file a grievance in Step 2 of the grievance procedure requesting that a new plan be installed. Any such grievance shall include a statement of the alleged changed condition(s), including approximate date(s) of such alleged change(s). If the Board decides that a change has occurred which requires new standards, it shall order the Company to develop and install an appropriate new plan and to appropriately compensate the grievant(s).**

* * * * *

PRIMARY PRODUCTION BONUS -- #1 & #2 STEEL
PRODUCING OPERATION
EFFECTIVE JANUARY 26, 2014

PHILOSOPHY:

1. The Plan is designed to be fair to the employees and our stakeholders.
2. The Plan is designed to be easy to understand and implement.
3. The Plan is based on the concept that we will enjoy significantly greater earnings only when the mill's assets are producing quality steel.
4. The Plan is designed to pay well at traditional production levels and pay very well at truly superior production levels.
5. The bonus payout directly increases with improved performance. The payout has no maximum limit.
6. The Plan is to be updated for new or changed conditions.

PLAN DESCRIPTION:

1. This Plan is applicable only to weeks during which #1 and #2 Steel Producing are scheduled to operate and #2 Steel Producing is typically scheduled to operate 12 hours per day.
2. The production bonus is based on slab tons cast per scheduled production day.
3. For Normal Operations the Total Slab Tons Cast per Production Day is based on an average capability of approximately 8,300 hot metal tons per production day.
- ...
7. Restricted Operations under this Plan occur during a week when operating crew are scheduled at both #1 and #2 Steel Producing and management restricts production to the Targeted Slab Tons Cast per Day listed below:

Planned Slab to Hot Metal Ratio	Targeted Slab Tons Cast per Day
Less than 1.12	8,895 or less
1.12 to 1.185	9,310 or less
Greater than 1.185	9,700 or less

If the Restricted Operations is for an entire pay week, the slab tons cast per day calculation below is performed on a weekly basis. If the Restricted Operations is for less than a pay

week, the slab tons cast per day calculation below is performed on a daily basis for days of Restricted Operations and the calculation detailed in 3 above for Normal Operation is performed on a daily basis for days of Normal Operations.

- a. The production bonus payout is 20% if the actual slab tons cast per production day is at least 70% of the target.**
- b. The production bonus pay is 0% if the actual slab tons cast per day is less than 70% of the target.**
- c. The quality adjustments listed in item 4 above will be applied during restricted operations.**
- d. The minimum weekly Production Bonus percentage will be 0%.**

BACKGROUND

The Employer is ArcelorMittal USA with Plant facilities located in Cleveland, Ohio. The Union, United Steelworkers, Local 979, is the exclusive collective bargaining representative for all production and maintenance employees at the Plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years the most recent of which is effective September 1, 2018.

Incentive Plans are variable compensation plans designed to afford additional earnings opportunities above base rates of pay when certain production targets and other metrics are achieved. The Incentive Plan or production bonus covering the Primary Division, which includes Iron and Steel Producing, was established on January 24, 2014 by agreement. This Plan is based on slab tons cast per production day as well as a quality component measuring various applicable quality standards. Calculation of this Plan is completed and applied weekly to the

Employees in the Iron & Steel Producing Divisions and also makes up a third of the Plant-wide Average Production Bonus.

At the beginning of 2020 a novel virus, called Coronavirus (COVID-19), was rapidly spreading around the globe and in March, 2020 the World Health Organization classified it as a pandemic. In response, and to slow down the spread of the virus, federal and state governments issued executive orders imposing unprecedented obligations and restrictions both on individuals and businesses. Although the steel making process was considered an “essential business” allowing it to continue operating, the pandemic and restriction orders forced many of ArcelorMittal’s customers to unexpectedly and temporarily close their plants.

The circumstances leading to the within grievance arose around mid-March, 2020 as the economic effects of the Covid-19 pandemic became manifest. Although ArcelorMittal USA had not necessarily expected great financial success in 2020, it did not foresee the loss in volume and drop in sales price experienced throughout the Company. The Company’s slab production data showed the Company’s overall performance as slightly above its business plan January through March, 2020. Unfortunately, slab production dropped by 36% in April, 40% in May, 30% in June, 32% in July and is expected to remain below the business plan for the remainder of 2020. The Company’s customers, especially the automobile industry, reduced orders substantially and, in some cases, refused delivery of product already made. Moreover, the price fell for the steel the Company continued to produce.

At the Cleveland facility slab production fell 44% Q1 to Q2. One of the Plant’s 2 blast furnaces, was idled on April 16th and one of the Plant’s 2 steel shops (West 2), was idled on April 24th. On April 12th the Plant announced the first layoff of 110 employees. On July 24th a WARN Notice was issued putting the various employees on notice that the layoffs which began

in April could continue beyond 6 months and could involve upwards of 454 layoffs of both represented and non-represented employees. These events, as well as the accompanying reduction in production have not only impacted the Primary Production Bonus, but also hundreds of employees at the Cleveland Plant and other Company locations who have been placed on layoff, among other severe consequences occasioned by this crisis.

For the Cleveland plant, the Total Shipments and Slab Production (in tons) were reduced from the 2020 Business Plan by thirty-eight percent (38%) in the Most Recent Forecast Four (“MRF 4”) received on April 7, 2020. As of April 6, 2020, there had been a further deterioration of production resulting in a fifty-one percent (51%) reduction of Total Shipments (tons) and Slab Production (tons) when compared to the 2020 Business Plan. Due to the reduced production levels, the Primary Production Bonus was decreased. Bonus Percent and Tonnage Produced for the Primary Production Bonus from April 5, 2020 forward is as follows:

Week Ending	Bonus Perf %	Primary Tonnage Produced
April 11, 2020	35.6%	69,285
April 18, 2020	16.9%	58,316
April 25, 2020	4.5%	30,216
May 2, 2020	3.0%	30,176
May 9, 2020	0.6%	32,596
May 16, 2020	2.4%	33,777
May 23, 2020	0.0%	38,613
May 30, 2020	0.4%	35,711
June 6, 2020	3.5%	35,328
June 13, 2020	0.2%	36,449
June 20, 2020	3.8%	27,268
June 27, 2020	0.1%	37,322
July 4, 2020	2.1%	37,900
July 11, 2020	1.6%	34,112
July 18, 2020	0.0%	41,031
July 25, 2020	0.0%	38,318
August 1, 2020	2.3%	29,505

On April 28, 2020 the following grievance was filed alleging the Company was not properly implementing the Primary Production Bonus plan:

Statement of Grievance: The Company has violated the agreement between the parties by not following the Incentive Plan for Primary. This change has resulted in harm to all Bargained for Employees covered under the Primary Plan as well as harm to those covered under the Plant Incentive.

Union Position & Remedy: Follow the agreed to Incentive Plan and re-average all operating hours that were affected, both in the Primary and Plan plans and pay all lost wages.”

ISSUE

Whether the Employer violated the collective bargaining agreement by failing to modify the Primary Production Bonus Plan pursuant to the Restricted Operations language appearing in No. 7? If so, what is the appropriate remedy?

POSITION OF THE UNION

The Union contends that the Company should abide by the Restricted Operations language contained in No. 7 of the Primary Production Bonus Plan. In the past, anytime the Blast Furnace was down or the West Side was down the Company still utilized the Restrictive Operations language. According to a 1969 Arbitration Ruling regarding incentives, the Company should have met with the Union prior to making any changes to the Plan.

The Union notes that the purpose of the Incentive Plan is to afford employees the opportunity for earnings. Since the Primary departments are still operating, the Union contends that the Company should provide some sort of opportunity. What the Company is doing is making arbitrary changes to the Incentive Plans.

Moreover, the Company has made no attempt whatsoever to modify the Plans. The earnings opportunity must still be maintained when there is change in operations. The Company

is continuing to pay near 0% of compensation. If there is a change in conditions, the Plan must be modified. If the Company could use just any change in business conditions, they could change the Plan on a whim.

POSITION OF THE COMPANY

At issue in this arbitration is the Union's claim that the Company is obligated to prop up the Primary Incentive Plan during this unprecedented period when because of the pandemic businesses all over the world, including Arcelor, have fallen on tough times in terms of both selling price and demand for product.

Although ArcelorMittal had not necessarily expected great financial success in 2020, it did not foresee the loss in volume and sales price experienced throughout the Company. Slab production dropped by 36% in April, 40% in May, 30% in June, 32% in July and is expected to remain below the business plan for the remainder of 2020. Moreover, the price fell for the steel the company continues to produce. On April 12th the Plant announced the first layoff of 110 employees. On July 24th a WARN Notice was issued putting employees on notice that layoffs could continue beyond six months and could involve upwards of 454 layoffs both union and non-union employees.

Production is not being restricted by management and, as such, the Restricted Operations language in the Primary Production Bonus Plan does not apply. The decrease in production is a direct impact of current business conditions. Many customers have unexpectedly and temporarily closed their plants, due to the COVID-19 pandemic. These closures have direct impact on the operations at ArcelorMittal Cleveland and have resulted in lower production.

The Union contends that the Company has used the Restricted Operations language in the past for situations where the West Side was down or a Blast Furnace was down. This unprecedented condition resulting in a downturn in the market is outside of management's control and is part of the variability of incentive plans and, as such, does not warrant any adjustments to the Production Bonus Plan or targets.

The Union claims the Company should have met with it to go over the new Plan that is being installed as cited in the 1969 Arbitration. The Company is following the terms of the existing Production Bonus Plan and has paid bonus/incentive according to the existing Plan. There also is no changed condition as outlined in Article 9 – Economic Opportunity, Section B. Incentive Plans. Therefore, no meeting was required.

Regarding the email sent on April 21, 2020, the Company responded accordingly that the Company was not making any changes and planned to abide by the Plan language. The Union did not request a meeting either and could have if they had concerns. The Company is still willing to meet to review any proposals the Union would like to offer.

FINDINGS AND DISCUSSION

The essential underlying facts in the within grievance are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties

when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

The narrow issue presented within is whether the Company should have modified the Primary Production Bonus – #1 and #2 Steel Incentive Plan following the economic impact of COVID-19 which produced a sharp decline in incentive payouts beginning in April, 2020. Article 9. B.2 of the Basic Labor Agreement controls the circumstances under which the Company must modify an existing incentive plan. However, it is not enough to simply show that the earnings from the Incentive Plan have changed in order to precipitate a modification. Rather, the Union must prove that the change was caused by one of the factors identified in Article 9. B. 2. A careful review of the record evidence shows that none of those factors are present in this situation.

Tracking the language of Article 9.B.2. (which appears fully on page 1. of this Award) the evidence is clear that there have been no mechanical improvements, nor any changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards which have impacted the earnings opportunity provided under the Primary Production Bonus – #1 and #2 Steel. There also has been no introduction of new products nor the modification of any current products. The Company still produces the same products in the same way. Furthermore, these factors are exclusive and the only ones that can be considered since Article 9. B. 2. provides that “in all other circumstances” the Plan shall remain unchanged.

The current lower production levels at the Plant, which have resulted in diminished incentive earnings, clearly were the result of a sudden reduction in the demand for steel directly attributable to the COVID-19 pandemic and the corresponding shut down of non-essential

businesses. However, changes in economic conditions are unfortunately an inherent part of the risk contracting parties assume as a part of doing business. As Chairman Sylvester Garrett stated in USS, case no. USC-1890 “changed market conditions which adversely affect incentive earnings do not in themselves provide a basis for adjustment in an incentive”. That is precisely the situation existing within.

Arbitrator Terry A. Bethel reached a similar conclusion to that of Chairman Garrett in Indiana Harbor Coke Company and United Steelworkers Local 1010, (April 22, 2013) when he held that:

“ . . . the circumstances that require a modification (to an Incentive Plan) were set out expressly in Section B.2. and nothing could be added to that list. In particular, Section B.2. did not require a modification in the event of economic change”. (Emphasis added.)

However, Arbitrator Bethel did offer the following proviso:

“Had the change been permanent or of long duration, these circumstances would have required a modification to the Plan. It would not make sense to tie the Union to a Plan with a target that could never be achieved. But the revision here was temporary and, in fact, production returned to pre-recession levels at some point in 2010.”

Similarly, while the effects of the COVID-19 pandemic seem far from over at this point in time no one can conclude that the current conditions are or will be permanent in nature. However, if that point is ever reached, appropriate adjustments to the Plan obviously would have to be made.

Furthermore, the referenced factors of Article 9. B. 2. such as mechanical improvements, changes to equipment or manufacturing processes, etc. clearly contemplate changes which are of a more permanent or longer lasting effect as opposed to temporary changes in conditions which are the result of fluctuating market forces. Also, this is not a situation similar to management

scheduling an outage or repair or just intentionally restricting its operations as suggested by the Union. Rather, this is simply a case of the Company facing a limited demand for its products by its customers due to harsh economic circumstances on a global scale.

Finally, I am aware that this grievance had been held in abeyance while the Company and the Union met to discuss the idea of reverting to a previous Incentive Plan which was agreed to on May 29, 2011 and which was precipitated by the fact that the #2 Steel producing was not restarted in 2009 when the rest of the Cleveland Plant was restarted and, instead, was started in 2012. Prior to the restart, the Company had a “one shop” Plan for Iron and #1 Steel producing based upon ladles opened per scheduled day.

During the within Step 3 meeting, the Company proposed reverting to this “one shop” Plan because currently the #1 Steel making shop is the only one operating. The Company met with the Union on June 1, 2020 to discuss the possible implementation of this Plan. However, the parties eventually agreed to not revert to the “one-shop” Plan and continued on with this grievance procedure.

Significantly, in its closing argument the Company indicated that it is still prepared to implement the Alternative Incentive Plan described above and as more fully set forth in Company Exhibit “2” because the #1 Steel making has been the only one operating during the pertinent time frames existing within. Given the Union’s failure to sustain its requisite burden of proof in this matter, and the Company’s offer to implement this Alternative Incentive Plan which is not only applicable to the within situation but would also provide some measure of additional compensation to the bargaining unit, I believe it is within my broad arbitral remedial powers to direct the implementation of that Alternative Incentive Plan as offered by the Company.

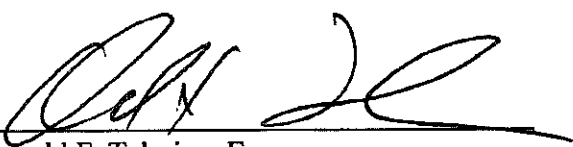
AWARD

The within grievance is denied on the merits.

However, the Alternative Incentive Plan set forth in Company Exhibit 2 shall immediately be implemented.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date: Oct. 9, 2020
Pittsburgh, PA


Ronald F. Talarico, Esq.
Arbitrator