| | | |
|---|---|---|
| IN THE MATTER OF THE ARBITRATION | ) | OPINION AND AWARD |
| Between | ) | **RONALD F. TALARICO, ESQ. ARBITRATOR** |
| **ArcelorMittal Cleveland, LLC** | ) | Grievance No.: 0813 |
| and | ) | Case 117 |
| **UNITED STEELWORKERS LOCAL 979** | ) | |

**GRIEVANT**

Group Grievance

**ISSUE**

Calculation of the
Plant Average Production Bonus

**HEARING**

October 20, 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 October 20, 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

. . .

**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).**

## 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 opportunity above base rates of pay when certain production targets and other metrics are achieved. The incentive or production bonus plan covering the Plant Average is a calculation of the Primary, Hot Mill, and Finishing Production Bonus plans. The Plant Average, which is processed for the Employees from MEU, Quality Services, Plant Services, Logistics and the Railroad was initially agreed to in 2003 with the Predecessor Company, ISG. These units were combined because they support the main production operations. In 2010, an additional agreement was signed confirming the use of the Plant Average.

At the beginning of 2020 a novel virus, called coronavirus (COVID-19), was rapidly spreading around the globe which the World Health Organization classified as a pandemic. In response, and to slow the spread of this virus, federal and state governments issued executive orders limiting individuals' rights as well as imposing unprecedent obligations and restrictions. Although the steel making process was considered to be an "essential business", the pandemic and restriction orders forced many of its customers to unexpectedly and temporarily close their plants -- especially those in the automobile industry.

Both sides understood that the downturn in the market as well as the reduction in production not only impacted this incentive, but also the hundreds of employees at ArcelorMittal Cleveland and other ArcelorMittal locations who have been placed on layoff at the time of this grievance, among other severe consequences occasioned by this crisis. For the ArcelorMittal Cleveland plant, the Total Shipments and Slab Production (in tons) were reduced from the 2020 Business Plan by thirty-eight (38%) percent in the Most Recent Forecast Four ("MRF 4") received

on April 7, 2020. As of April 16, 2020 there had been a further deterioration of production resulting in a fifty-one (51%) percent reduction of Total Shipments (tons) and Slab Production (tons) when compared to the 2020 Business Plan.

Due to the reduced production levels, the Plant Average Production Bonus had decreased as well. Bonus Percentages for the Plant Average Production Bonus beginning April 5, 2020 were as follows:

| | | Blast Fce, BOFs & Casters | | Hot Strip Mill | | Finishing | | Plant Average |
|---|---|---|---|---|---|---|---|---|
| | Payroll | Bonus | Tonnage | Bonus | Tonnage | Bonus | Tonnage | Bonus |
| Week Ending | # | Perf. % | Produced – (a) | Perf.% | Produced – (b) | Perf. % | Produced – (d) | Perf. % |
| April 11, 2020 | 9 | 35.6% | 69,285 | 36.9% | 29,715 | 2.6% | 6,540 | 25.0% |
| April 18, 2020 | 9 | 16.9% | 58,316 | 48.2% | 28,358 | 39.7% | 19,751 | 34.9% |
| April 25, 2020 | 10 | 4.5% | 30,216 | 42.9% | 39,444 | 0.0% | 0 | 15.8% |
| May 2, 2020 | 10 | 3.0% | 30,176 | 48.6% | 31,668 | 0.0% | 0 | 17.2% |
| May 9, 2020 | 11 | 0.6% | 32,596 | 27.1% | 35,603 | 0.0% | 0 | 9.2% |
| May 16, 2020 | | 2.4% | | 34.6% | | 0.0% | | 12.3% |
| June 27, 2020 | | 0.17% | | 20.1% | | 0.0% | | 6.7% |

The Union contends that the Company should not have included the Finishing department Bonus percentages in the Plant Average calculation since Finishing was not operating for five (5) weeks which therefore makes the Plan not valid. The Union also contends that since the Finishing department was not operating that constitutes a changed condition and the Company was therefore required (as per Article Nine, Section B. 2.) to negotiate with the incentive committee about an interim rate to create an earnings opportunity for the employees.

## ISSUE

Whether the Employer violated the collective bargaining agreement by failing to properly calculate the Plant Average Production Bonus due to the Finishing department not operating? If so, what is the appropriate remedy?

## POSITION OF THE UNION

Mr. Arbitrator, the Union's position will not be much different from the prior case. A discussion of the June 30, 2010 Arbitration Award from Arbitrator Rolf Valtin shows similar conditions did exist. Orders were down in a depressed market. In that case the Union argued that the ten (10%) percent Production Bonus minimum for the operating units that were not scheduled for production hours should have still been paid. Arbitrator Valtin ruled against it. He said that the plants were in a "deactivated" status and there was no Plan in place to have a ten (10%) percent payout. Now the Company wants it both ways. Here, they are arguing that the Plan with zero percent should be applied which reduces the plant's Average Production Bonus Plan. It is not the zero, itself, or the point of the structural plan. If you have five or more units in an operating Plan and the Plan paid zero Production Bonus, we would not protest that being applied to the Plant Average Plan. But in this case, there was no earnings opportunity for Plant Average Production employees covered by the Plant Average Production Bonus Plan because there were no earnings opportunity in shipping and handling and that automatically gives them a zero percent which artificially reduces their payout and their pay. However, they worked in the Plant and were contributing to the production of the Hot Strip Mill and the primary end. They were doing their normal work job. The plant was operating and the employees should not be penalized because the Company made a business decision to shut down the finishing mill and the hot mill in the same weeks and totally deactivated the plant.

It was the Company's decision to do this, it was not the pandemic. It was not an Act of God. The Company shifted orders to Burns Harbor, and we believe there should have been some type of adjusted Plan modification. The deactivation came from the Arbitrator's ruling about the plant when there was no production. The plant is in a deactivated status and the Union's argument

here today is how could a deactivated plant be applied to an active plan for the Plant Average Production Bonus for all of the employees were working on these plans . It would be an injustice for them and it impacted their earnings opportunity by calculating the bonus without making a modification. So respectfully, Mr. Arbitrator, the Union is asking that the grievance be sustained and the Company ordered to propose a modification for the Plant Average Production Bonus Plan that would make earnings opportunity for those employees who are covered under the Plan.

## POSITION OF THE EMPLOYER

Before I jump into my prepared remarks I would like to make a couple of comments: (1) I want to reenforce Mr. Spiritis' testimony and I would like to refer the Arbitrator to Exhibit "D", Page 4 of 6 where it talks about the finishing end of the Plant and I am looking at specifically 4. B.which talks about utilization of the product and it says and I quote: "A fixed ten (10%) percent bonus percentage is applied to all Tandem and/or HDGL scheduled non-production crew hours for the week. NOTE: In the event that the unit is not scheduled to operate for an entire pay week, for reasons other than a planned outage (e.g. market conditions or lack of steel available) the base plan for that unit will pay zero (0%) percent for that week. It doesn't say the plant would be deactivated. It says very specifically that the Plan will pay zero (0%) percent for that week.

The other point is that the Galvanizing Line and the Primary were idled for essentially the same weeks that were related to the pandemic. The plant as everyone knows was idled during the pandemic to protect their employees and that had an immediate impact on our steel shipments to them. They no longer needed the steel because they weren't producing.

Employees enjoy no guarantee of income beyond the base rate of pay on the job that they have been assigned to. Incentive plans are designed to encourage production when production is needed – not to be a guarantee of pay. The obligation of the Company to modify an existing

incentive plan is triggered only if the changed condition is a result of one or more of the factors set forth in Article 9, Section B. 2 Those factors include: Mechanical improvements made by the Company in the interest of improved methods or products; that was not the case here. Changes in equipment, manufacturing processes, or methods – none of which took place in this situation. Changes in materials processed or quality or manufacturing standards which impact the earnings opportunity provided under the Cleveland Plantwide Plan – again not in play under the facts of this case.

The Plantwide dip in incentive earnings was a direct result of a dip in business and the incentive plan worked as it was supposed to – it is a variable portion of the economic package and you would expect the incentive opportunity to fall in lock step with business – which is what occurred.

The Union, trying to find some solace in the Award of Rolf Valtin, argues that the finishing and shipping departments were deactivated – hoping that the word deactivation conjures up some special meaning. But, in fact, I cannot find the word "deactivated" as justifying a modification of an incentive plan in Article 9, Section B. 2. Perhaps if the tandem mill equipment and hot dip galvanizing equipment had been removed on a permanent basis the term deactivation would carry some weight, but not when two facilities were on a very temporary basis without work. The lesson to take from Arbitrator Valtin's decision is that without production, there is no incentive which makes sense – not to artificially protect some employees by modifying a Plan without justification.

The Award that I ask you to consider is ArcelorMittal case No. 84 that Dino Spiridis introduced. Like today's case the Union tried to skew Article 9, Section B. 2. in a case when the incentive opportunity at the Conshohocken Plant fell because of lack of work – caused in part by the defection of a customer. In his Findings and Discussion, Arbitrator Bethel relied in part on the

finding of previous USS Board of Arbitration Chairman Garrett on the top of page 16. Arbitrator Bethel held: "The Company argues that this was merely a reduction in demand for its products and, it says, a change in volume due to market forces is not a change in materials processed, citing Chairman Garrett's opinion 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."

The Company argues Arbitrator Bethel went on to find on page 17: "I understand the Union's concern about the Plan, which has paid considerably less than 20% for almost three years. But I cannot order the Company to modify the Plan solely because the payouts are low. The reasons for a modification are expressed in the Agreement and, given the circumstances of this case, I cannot find that any of the criteria of Article 9.B.2. apply. Thus I must deny the grievance."

And so I argue in this case, that there have been none of the reasons for a modification as set forth in the Agreement and so ask you deny the grievance and the relief sought.

## 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.

When I first started working on this analysis of yet another production bonus incentive plan being negatively impacted by the economic effects of the COVID-19 pandemic what immediately came to mind was the classic/iconic movie "Groundhog Day". For those of you whose like experiences has not allowed for the viewing of this film, it features a TV weatherman (played by Bill Murry) who finds himself reliving the same day over and over again when he goes on location to the small town of Punxsutawney, Pennsylvania (which coincidently is approximately 70 miles northeast of my home in Pittsburgh) to film a report about their annual Groundhog Day celebration.

It is not my intention to make light of the seriousness of the within grievance filed by the Union. Incentive plans are valuable compensation plans designed to afford additional earnings opportunities above base rates of pay when certain production targets and other metrics are achieved. Obviously, this is a matter of considerable importance to the bargaining unit. However, I cannot ignore the fact that numerous prior arbitration Awards issued by noted arbitrators Terry A. Bethel and Rolf Valtin, as well as myself, have all consistently held that "changed market conditions which adversely affect incentive earnings do not in themselves provide a basis for the adjustment of an incentive." For reasons more fully explained below, I find that same principle to again be applicable herein.

The Plant Average Production Bonus is as its name suggests: the calculated average of three separate Bonus Plans (Primary, Hot Mill and Finishing). That average is then utilized for employees from MEU, Quality Services, Plant Services, Logistics and the Railroad. However, as discussed in several prior arbitration Awards, due to the pandemic production across the Company was reduced considerably. That reduction in production levels substantially impacted various incentive bonus plans existing throughout the plants. However, despite considerable efforts by the Union to require the Company to negotiate modified bonus plans (as per the dictates of Article

Nine, Section B. 2. of the Basic Labor Agreement), prior arbitration Awards have consistently held that it is not enough to simply show that the resulting earnings from the incentive plans changed in order to precipitate a modification. Rather, in each case the Arbitrator found that the Union was unable to prove that the change was caused by one of the factors identified in Article Nine, Section B. 2.

In this case, one of the three components that make up the Plant Average Production Bonus (i.e. the Finishing department) was totally shut down for five weeks. The employees from that Department were fortunately able to work in other areas of the plant during those weeks rather than face layoff. The Union argues that since there was zero production during those weeks, that the Finishing department numbers should not have been included in the calculation with the other two components of the Plant Average Production Bonus. By including the zero production levels in the three department calculation the Union asserts that it lost 7.9%, 8.6%, 4.6%, 6.2%, and 3.4% in incentive payments during the applicable five weeks.

However, whether one would look at the production levels in the Finishing department by itself, or as one component of the three component plant average, the results would be the same. There were no circumstances that would have required the Company to modify the existing Plant Average Incentive Plan because clearly there were no new or changed conditions resulting from: (1) mechanical improvements made by the Company in the interest of improved methods or products; or (2) changes in equipment manufacturing processes or methods, materials processed, or quality or manufacturing standards which impacted the earnings opportunity provided under the existing incentive plan. The shut down of the Finishing department for five weeks was simply a reasonable managerial decision in response to a temporary business situation. Not to state the

obvious, but from the way incentive plans work when there is a decrease in business there usually will be a corresponding decrease in incentive compensation.

Finally, the Union places considerable weight on the June 30, 2010 Award of Arbitrator Rolf Valtin. The Union in that case protested the non-payment of a mandatory 10% bonus for scheduled work hours at times when a particular unit was not in operation. The context in that case was the recession of 2008-2009 which severely affected the steel industry. That context is similar to the current economic impact of COVID-19.

The operative language from the incentive plan required a fixed 10% bonus to be applied to all scheduled "non-production crew hours". The Union argued that the hours during which their unit was shut down should have been considered "scheduled non-production hours". However, Arbitrator Valtin found the Union's claim to be unsound. He ruled that the applicable language arises when there is a pause – a temporary halting – in the operation of these units. Such pauses occur, e.g. in connection with outages and repair turns, or other exigencies of short duration in which the 10% bonus arrangement would reasonably be seen as operative. Arbitrator Valtin went on to find that the shutdowns in his case were of substantial and indefinite duration which he termed to be a "state of deactivation".

However, I find no support in Arbitrator Valtin's decision for the situation existing within. First and foremost, Arbitrator Valtin acknowledged that the "new or changed conditions" specified in Article Nine, Section B. 2. of the basic labor agreement warranting a plan modification were not present in his case. Moreover, his use of the word "deactivated" does not change the basic underlying circumstances that the unit at issue within, which generated zero production for five weeks, was not because of any of the justifying factors set forth in Article Nine, Section B. 2. Here we have nothing other than a department which on a very temporary basis ceased production due

to a business downturn. This was merely a reduction in demand for the Company's products and, as indicated above, such changed market conditions are not a proper basis for a mandatory adjustment in an incentive plan as per Article Nine, Section B. 2.

For all of the above reasons, the grievance must therefore be denied.

**AWARD**

The grievance is denied.

Date: Dec. 30, 2020
Pittsburgh, PA

Ronald F. Talarico, Esq.
Arbitrator