IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
Between	)	**RONALD F. TALARICO, ESQ. ARBITRATOR**
CLEVELAND-CLIFFS, STEEL LLC (BURNS HARBOR PLANT)	)	Grievance No.: PW 20-0005
and	)	Case 139
UNITED STEELWORKERS, LOCAL 6787	)	

GRIEVANT

Group Grievance

ISSUE

Primary Incentive

VIDEO HEARING

April 11, 2023

POST-HEARING BRIEFS SUBMITTED BY

May 31, 2023

APPEARANCES

For the Employer
Richard L. Samson, Esq.
Ogletree Deakins

For the Union
Michael Millsap
Director
UNITED STEELWORKERS
District 7

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 via video on April 11, 2023, 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.

PERTINENT CONTRACT PROVISIONS

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 a 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, if shall order the Company to develop and install an appropriate new plan and to appropriately compensate the grievant(s).**

4. **The Company shall be permitted to establish an interim rate which may be used while the new incentive plan is being developed. The interim rate shall consist of, in addition to the applicable Base Rate of Pay, a special hourly interim allowance equal to the percentage equivalent of the straight-time average hourly earnings above the Base Rate of Pay in Appendix A during the six (6) pay periods immediately preceding implementation of the interim rate. If the job involved is a new job, the interim rate shall be the applicable average interim rate found by relating the job requirements of such new job to the job requirements of the existing jobs under the previously existing incentive plan and shall be based solely on the incentive earnings of the related job(s) under the old plan.**

* * * * * *

Attachment F

Burns Harbor

Production Bonus Plan-Iron & Steel Producing Divisions

Philosophy

1. **The Plan is based on second quarter 2008 production & 2002 quality performance.**

2. **The plan is designed to be easy to understand and implement.**

3. **The Plan is designed to pay well at traditional production and quality levels; very well at improved levels.**

4. **The Plan has no maximum limit.**

Description

1. **The production bonus is based on cast heats completed per day.**

2. **For normal operations the plan is designed to:**

   a. **Pay 22.5% at 46.2 completed heats per day.**
   b. **Pay is adjusted up or down by 2.857% for every heat completed above or below 46.2 per day.**
   c. **Begin payout at 39 completed heats per day.**

3. **The Plan has the following quality components (performance basis is 2002):**

   a. **Off heat performance Improvement; basis is 6 off heats per week at 25% per off heat less than 6.**
   b. **Caster automotive expenses application rate #1 cc basis is 67.63%; calculation is (application rate – 67.63%)/5.**
   c. **Caster automotive exposed application rate #2cc basis is 83.72%; calculation is (application rate – 83.72)/2.5.**
   d. **LTS conformance to rinse basis is 99.51%; calculation is 0.49 – (100%% - LTS).**

4. **The Plan will be calculated daily and applied weekly as follows:**

   a. **The production portion will be calculated daily and averaged for a weekly production bonus.**

b. The Quality portion will be calculated weekly and applied daily to the production portion.
c. The production calculation will be based on BOP tap times from 11p to 11p the next day.
d. The minimum daily Production Bonus is 0%.

5. The seven (7) daily bonus percentages are averaged from Sunday to Saturday to create the Iron and Steel Producing Division production bonus for the week.

6. When weekly production is restricted by Management to 46 heats cast complete per day or less including the Riverdale Recognition described below, the production bonus is calculated on a weekly basis as follows:

   a. Management determines the weekly targeted cast heats complete.
   b. The Production bonus pay is 22.5% if the actual ladles completed per day are at least 90% of the target.
   c. The production bonus is 0% if the actual ladles opened per day are less than 90% of the target.
   d. The Quality portion of the plan is calculated and applied to the production portion of the plan.
   e. The minimum Production Bonus percentage for the week is 0%.

RIVERDALE RECOGNITION

Burns Harbor recognizes the importance of producing hot metal to support the operations of the Riverdale facility in Riverdale, ILL. The primary division production bonus plan will include the following additive for all time that support of the Riverdale facility is required.

Each Riverdale car will be counted as 0.60 Burns Harbor heats. This ratio was determined by comparing the tonnage per Riverdale car (-180 tons) versus the tonnage for an equivalent Burns Harbor heat. The number of daily cars sent to Riverdale will be multiplied by the tonnage ratio (0.69) and added to the completed Burns Harbor cast heats for the day to determine the total Burns Harbor heats to be applied to the Production portion of the bonus described in point 2 above. This will compensate Burns Harbor Employees as if the hot metal sent to Riverdale has actually been converted and cast at Burns Harbor.

No recognition is anticipated on those occasions where excess hot metal is available as a result of operational interruption in the Burns Harbor operation and 46 heats have not been achieved.

Revisions:

3.16-17

1. **The quality portion of the plan will continue to be calculated and applied daily per the language on the previous page. However, the quality calculation for the current week will be based on the previous week's quality data, there will be a one week quality lag introduced. For example: For the week ending 3-18-17, the quality data used for that week's calculation will be the quality data obtained from the week ending 3-11-17.**

2. **During weeks with Planned Maintenance – the day(s) of the planned maintenance will be excluded from the calculation for the week. For example, during a seven day week containing a single planned maintenance day, the operating hours and heat production for that maintenance day will be excluded from the production piece of the calculation (this will result in calculating the productivity piece (heats/day) for the week by taking the average of the remaining operating days in that week). If the planned maintenance is of greater than one week in nature, the language in the Burns Harbor MOU (dated April 28, 2010) will apply.**

BACKGROUND

The Employer in this case is Cleveland-Cliffs Steel LLC ("Company"). The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and USW Local 6787 ("Union"), is the sole and exclusive representative for collective bargaining for the employees at the Company's Burns Harbor, Indiana Plant. The Company and the Union have been parties to a series of basic labor agreements over the years. The basic labor agreement at issue expired on September 1, 2022, and the parties have negotiated a successor agreement, but the parties agree that the Grievance arose under the basic labor agreement that expired on September 1, 2022.

The Company operates a fully integrated steel-making operation in Burns Harbor, Indiana, which employs approximately 3500 employees in a production and maintenance unit represented by the Union. The Burns Harbor plant is one of a number of steel-making facilities operated by the Company and covered by the basic labor agreement. The plant provides steel for the automotive, energy and construction sectors of the economy.

At issue in the instant case is the Primary Incentive Plan negotiated between the parties pursuant to Article Nine Section B of the basic labor agreement. Incentive plans are variable compensation plans designed to afford additional earnings opportunities above base pay rates when certain production targets and other metrics are achieved. The Primary Incentive Plan is applicable to Employees of the Iron and Steel Producing Departments and impacts Employees covered by the Plant-Wide and Coke Plant production bonus plans. The Primary Incentive Plan's formula is based on the number of heats produced per day, calculated on a weekly basis. Incentive payout begins when the heats per day reaches 39, and if the pertinent production figure does not reach 39 heats per day, no incentive payment is required.

The Primary Incentive Plan has remained largely unchanged since 2004. The language at issue in the instant Grievance appears in Paragraph 6 under the Description heading of the Plan. The pertinent language of Paragraph 6 provides as follows: "When weekly production is restricted by Management to 46 heats cast complete per day or less including the Riverdale Recognition described below, the production bonus is calculated on a weekly basis as below:…". In the event Paragraph 6 is triggered by this language, there is a modified scale of incentive payments required.

The grievance arose as the result of the onset of the COVID-19 pandemic in March 2020. In response, and to slow the spread of the virus, federal and state governments issued executive orders limiting individuals' rights as well as imposing unprecedented obligations and restrictions. Although the steelmaking process was considered to be an "essential business" and could continue to operate, the pandemic and restriction orders forced many steelmaking customers to unexpectedly and temporarily close their plants and cancel orders for steel – especially those in the automotive industry.

The impact on production at the Burns Harbor plant was immediate and severe. The Company readily acknowledges that the Primary Incentive Plan was not paying at the levels sought by the Union in this proceeding. Moreover, the Union did not challenge, and in fact tacitly conceded, that the driving force behind this circumstance was the pandemic and its impact on the Company through the sudden and extensive cancellation of customer orders.

When the decrease in production fell below the threshold for incentive payments, and the affected employees did not receive any incentive pay, the Grievance was filed. The parties' presentations focused on the specific wording of Paragraph 6 quoted above about whether "*weekly production was restricted by management.*"

The Union argued that there was sufficient work within the Company to schedule the Burns Harbor C and D furnaces full. The Union further argued that this step was mandated by the combination of the Primary Incentive Plan with a 2010 Memorandum of Agreement, a 2010 Memorandum of Understanding, and a furnace priority letter. The Company's position was that Paragraph 6 of the Primary Incentive Plan was not triggered in this case because the reduction in production was not caused by or at the direction of the Company, but instead was due solely to market conditions that changed due to the pandemic.

ISSUE

Whether the Company violated the Primary Incentive Plan; and if so, what shall be the remedy?

POSITION OF THE UNION

The Union does not allege a violation of the basic labor agreement. The Union alleges a violation of the 2010 MOA, the 2010 MOU dated April 28, 2010 (the furnace priority letter), and the Primary Incentive Plan.

In 2020, there were poor business conditions in all sectors of the steel industry. It is the Company that makes the decisions on which plants produce what products and how much product will be produced. It was the Company's decision to operate the Indiana Harbor #7 furnace at full capacity and reduce the operations at other furnaces, including the Burns Harbor C and D furnaces, and not follow and support the MOA dated April 28, 2010.

Once the Company made the decision not to operate C and D furnaces full, the Company restricted the operations at the Burns Harbor furnaces. Therefore, the Company should have adjusted the target of heats necessary to hit 22.5% incentive earnings. If there was not enough business to operate the Burns Harbor C and D furnaces, the Union would not have an argument, but that is not the case.

The Company argues that Article Nine Section B does not require the Company to adjust the incentive plans because of poor market conditions. This is not "Groundhog Day" which was not real life and not like the lives of the employees and their families.

There is a very major difference between the present case and the "ground hog day" case at the Cleveland plant. Unlike in the Cleveland case, the Union is not arguing Article Nine Section

B. In order to fully understand the Union's case, the Arbitrator needs to consider the history of how the parties reached the MOU and the MOA.

In 2008, due to the recession, the steel industry was in severe poor business conditions. The Company approached the leadership of Local 6787 to find ways to reduce costs that included the very high incentive plans at Burns Harbor. Even though Burns Harbor is the most modern and productive plant within the Company, its costs were high due to the higher incentive plans. The parties did not reach agreement concerning the restructuring of the incentive plan but did agree on a Layoff Minimization Plan. In accordance with Article Nine, the Company could not restructure the incentive plan without the Union's agreement, so when no agreement was reached, the Company sent a letter (Union Exhibit #1) to the Employees. The highlights of the letter are:

> Third paragraph describes the measures taken to reduce costs.
>
> Fourth paragraph states: The Company has not been able to reach agreement with the Union that will sustain the Burns Harbor operations in the foreseeable future.
>
> Fifth paragraph states: The Company issued a warn notice and the Company will continue to work with the Union on options to reduce costs, conserve cash, protect customers and minimize the adverse impact on their employees.

In 2010, as the economy was coming out of the recession, the Company and the Union did reach a Memorandum of Understanding (MOU) on April 28, 2010 (Joint Exhibit #8). Highlights of the MOU are:

> Paragraph 1 states: the MOU has to be ratified by the membership of Local 6787.
>
> Paragraph 2 requires the Company to restart furnace D.
>
> Paragraph 4 a, b, c and 5 identifies the capital that the Burns Harbor Plant needed and the Company agreed to do.
>
> Paragraphs 6 and 7 identify capital that the Burns Harbor Plant might need and evaluates that capital.
>
> Paragraph 8 describes the work and the incentive to be paid during what amounted to the start up of the plant.
>
> Paragraph 9 describes the restructuring of the high cost incentive plans.

> Paragraph 19 states, "Both the Company and the Union agree to support and defend the terms of this MOU.

The membership did ratify the MOU. Separately, the MOA dated April 28, 2010 contains the guarantee that C and D furnaces will be operated full and given a priority behind the Indiana Harbor Furnace #7 (the largest furnace). This MOA was required because the Local Union Leadership felt the plant level management could not make such an agreement and it had to come from CEO Mike Rippey, and he signed the MOA. Paragraph 1 is key here:

> The Company agrees that among the blast furnaces in Indiana Harbor 3, 4, 5, 6 and 7, Cleveland furnaces 5 and 6, and Burns Harbor C and D with the exception of Indiana Harbor 7, the Burns Harbor furnaces C and D will be given priority for continued operations.

This was the quid pro quo between the parties, where the employees gave up over 50% of their incentive earning to get job security by giving the Burns Harbor Furnaces C and D priority in operating fully. The Company reduced its labor costs, which helped with the capital the plant needed to operate more efficiently. The parties did not use Article Nine when they agreed to restructure the six incentive plans; they just literally reduced the incentive earnings by 50%. The Company wants the Arbitrator to focus on Article Nine Section B and ignore the quid pro quo that the parties reached in 2010 in accordance with the MOA and the MOU. If the Arbitrator agrees with the Company, the Arbitrator will give the Company more than the quid pro quo that that the parties exchanged in 2010. Simply put, if there is a market sufficient to operate the Burns Harbor C and D furnaces fully behind Indiana Harbor furnace #7, and the Company chooses not to apply enough orders to produce at least 39 heats per day, then the incentive for the employees would be zero. This is not what the parties agreed to in 2010; the Burns Harbor C and D furnaces were to be given priority. The agreement is clear.

The finishing incentive plan, like the primary incentive plan, was restructured in 2010 by the MOU and reduced by 50%, but it had a floor of 20%. The Union had to arbitrate the finishing incentive plan in 2021 before Arbitrator Vonhof because the Company did not follow the quid pro quo that was agreed upon in 2010.

The primary incentive plan did not have a floor like the finishing incentive plan, but the primary incentive plan did require the Company to adjust the target heats.

> Paragraph 6 of the primary incentive plan states "when weekly production is restricted by management to 46 heats cast complete per day or less, including the

Riverdale Recognition described below, the production bonus is calculated on a weekly basis as follows:

a) Management determines the weekly targeted cast heats complete.
b) The production bonus pay is 22.5% if the actual ladle heats completed are at least 90% of the target.
c) The production bonus is 0% if the actual ladles opened per day are less than 90% of the target.
d) The quality portion of the plan is calculated and supplied to the production potion of the plan.
e) The minimum Production Bonus percentage for the week is 0%.

Paragraph a) gives management the right to adjust the targeted cast heats complete. This paragraph has to have a purpose. The only question is what does the word 'restricted' mean? That word could be applied in different ways, so it is necessary to examine how it is used in the document.

The poor market conditions in 2008 required the parties to create a Layoff Minimization Plan (Union Exhibit #2). The second paragraph in that plan states: "Current market conditions have resulted in restricted operations at the Burns Harbor Plant." The fourth paragraph states: "...during the time period Burns Harbor remains in restricted operations mode." The paragraph below number 10 states: "The LMP shall be considered fulfilled and restricted operations considered ended when Steel Producing schedules or averages 40 or more heats per day."

Union Exhibit #1 is the letter the Company sent to Employees. The second paragraph states: "Burns Harbor has been operating in a restricted production mode at a significantly reduced rate since October due to depressed business demand." Union Exhibit #3, jointly developed by the parties, states: "Present state #2 Burns Harbor is under **restricted/reduced operations**, future state Burns Harbor no longer under **restricted/reduced operations**."

Pete Trinidad, the only witness who was at the plant in 2008 when the parties bargained the layoff minimization plan, and in 2010 when the parties bargained the MOU and the MOA, testified in a credible manner, and his testimony was not disputed in any way by the Company. Therefore, his testimony must be accepted as factual.

Mr. Trinidad testified that due to the high incentive plans at Burns Harbor, the Company deemed the plant a swing plant and it was first to be cut back when there were poor market conditions. He testified that the Union goal was to bargain an agreement so the plant was cost competitive with the other ArcelorMittal plants and outside competitors. He testified the parties

reached agreement that the employees reduced their incentives by over 50% when there was no contractual requirement to do so. In return, the employees would have job security because Burns Harbor was no longer considered a swing plant.

Union Exhibit #3 was developed by the parties as a summary and was mailed by the Company to the employees prior to the vote on the MOU. This summary shows the current state of the Burns Harbor plant under the layoff minimization plan and how its status would change if the employees accepted the MOU. This testimony was undisputed and must be accepted.

Mr. Trinidad testified that the parties agreed to the April 28, 2010 MOA that placed the Burns Harbor C and D furnaces behind only the Indiana Harbor furnace #7 to operate full among all the ArcelorMittal plants. Mr. Trinidad testified that the Local Union Leadership did not believe that local management could make such a promise, and they required CEO Rippey to initial the MOA. This reflects how important the MOA was to the Company.

The MOA and the MOU reflect the quid pro quo agreed upon by the parties:

> Present #2: The Burns Harbor plant is under restricted operations/reduced operations because of poor market conditions and high costs.
>
> Future State #2: Burns Harbor is no longer under restricted operations – full operations.
>
> Present #3: The Burns Harbor plant is a swing plant for ArcelorMittal USA (meaning in a downturn the Company will cut back operations at Burns Harbor before the other ArcelorMittal plants).
>
> Future State #3: The furnaces at Burns Harbor will be #2 and #3 in priority in operating all other furnaces (behind Indiana #7).
>
> Present #5: No investments or major maintenance commitments.
>
> Future State #5: MAJOR capital investments and major maintenance commitments.

If the Union argued this case under Article Nine, the Company might be right that this was another ground hog day. The Union is not arguing Article Nine Section B. The Union is arguing a violation of the MOU, MOA and the primary incentive plan. The finishing department arbitration award is submitted because, just like this case, it was argued under the MOU rather than the basic labor agreement.

The Union requests the Arbitrator to sustain the grievance and make the Grievants whole for lost incentive earnings.

POSITION OF THE COMPANY

The Company owns and operates multiple steel-making facilities covered under the basic labor agreement, including the Burns Harbor facility. The Company supplies steel from the Burns Harbor facility to the automotive, energy and construction sectors of the economy, while servicing a variety of customers including most of the automakers as well as steel service centers and original equipment manufacturers.

The Grievance was filed in April 2020 against ArcelorMittal USA, the predecessor employer, alleging a violation of the Burns Harbor Primary Incentive Plan. The Union seeks to advance a previously rejected interpretation of the Primary Incentive Plan that this Arbitrator has previously decided. There was no agreed-upon issue, and the Company suggests that the issue be framed as: Did the Company violate Paragraph 6 of the Primary Incentive Plan when it did not pay at the rate set forth in that paragraph after business dropped significantly as a result of the COVID-19 pandemic? Based on the testimony and evidence, the Company submits the answer is "no" and therefore the grievance must be denied in its entirety.

The Primary Incentive Plan is one of several such plans at the Burns Harbor facility that function as variable compensation plans to afford additional earnings opportunities when certain production targets and metrics are achieved. The Primary Incentive Plan's formula is based on the number of heats produced per day. The calculations for the Primary Incentive Plan are completed and paid on a weekly basis to employees in the Iron and Steel Producing Departments. According to the Primary Incentive Plan, payouts start at 39 heats per day. If production falls below 39 heats per day, the Primary Incentive Plan provides that no incentive payout is required. The only exception is contained in Paragraph 6 of the Plan when "weekly production is restricted by management" in which case the Plan provides for the required level of payment. No other exception exists.

The Primary Incentive Plan has remained largely unaltered since at least 2004. The specific language at issue here - "*restricted by management*" – has been unchanged since that time. As reflected in the grievance procedure minutes, both parties agree that there was no changed condition under Article 9B of the basic labor agreement. Further, the Union is not relying upon or pointing to any past practice in support of its claims.

Much of the Union's case and testimony focused on the parties' 2010 MOU. That document came out of negotiations following the 2008 recession and the Company's emergence from the layoff minimization plan implemented to address the serious economic disruptions caused by that recession. Although the evidence regarding the MOU is largely irrelevant to the instant dispute, a few points regarding the MOU are worth noting.

First, while Union President Pete Trinidad correctly indicated that the incentive plans for Burns Harbor were incorporated into the MOU, there was no change in the Primary Incentive Plan's language from what existed previously. In particular, there was no change in the use of the words "*restricted by management*" from the earlier version of the Plan.

Second, the MOU was negotiated in a multi-plant environment that included the Burns Harbor plant and other plants. At that time, the Burns Harbor plant was viewed as a "swing plant," meaning that when certain economic conditions existed the Company could transfer work from Burns Harbor to other plants. According to the Union, one of the primary purposes behind the MOU was the Company's commitments to make capital investments in the plant and end its status as a "swing plant." The preamble to the MOU actually recognized the efforts of the parties to make Burns Harbor more competitive within ArcelorMittal as well as with outside competitors.

Third, while Mr. Trinidad tried to claim that the Union's agreement to reductions in some payouts of the various incentive plans was in exchange for a guarantee surrounding the amount of work to be performed at Burns Harbor, the MOU contains no such language. The only quid pro quo associated with the reduction in the payouts was the Company's commitment to make capital investments in the plant.

This reality is confirmed by three separate provisions of the MOU. Paragraph 9(b) of the MOU noted that the modified incentive plans had already taken into account new or changed conditions as stipulated under Article Nine Section B of the 2008 basic labor agreement. The parties incorporated a "fail safe" in Paragraph 4(c)(iii) of the MOU, which states that if the capital investment for the HSM Walking Beam Furnace Project did not occur, there would be a retroactive reimbursement of incentive payments based on the difference between the modified plan and payments under a 30% target. Lastly, Paragraph 9(f) of the MOU sets forth certain conditions for minimum payments under time periods that have long since lapsed.

These three provisions demonstrate that the "quid pro quo" for the reduced incentives was in exchange for the capital investments being made and not for any promise to maintain a certain level of production at the Burns Harbor plant.

The Union also made much of the so-called furnace priority letter and its relation to the modified incentive plans. However, as Mr. Trinidad conceded, the furnace priority letter only created a priority for Burns Harbor's C and D furnaces for "continued operations." The letter says nothing about the levels of production required at Burns Harbor or any Company facility (including Indiana Harbor where the number 7 blast furnace had a higher priority than the Burns Harbor furnaces).

There is no dispute that the Primary Incentive Plan was not paying at the levels claimed by the Union, and perhaps more importantly, there is no dispute over the reason why. The Union conceded that the Company sustained a severe downturn of orders caused by the pandemic. Mark Dutler's uncontroverted testimony and Employer Exhibits 4 and 5 demonstrate that the Company's business suffered significantly, leading to the implementation of a layoff minimization plan. There is no dispute that the impact on incentive payments was caused by a significant drop in customer orders.

As Mr. Dutler testified, the Company tried to bring customer orders into the Burns Harbor plant and was partially successful in doing so. More significantly, there were no orders transferred out of the plant, which the Union acknowledged was the primary goal of the MOU.

This Arbitrator has issued three awards all addressing incentive plans at the Company's Cleveland plant. The first decision in Case #807 addressed the iron and steel producing plan, and the decision in #813 addressed the plant's finishing plan. In both awards, the Arbitrator addressed the Steelworkers' claim that the negative impact on the incentive plans caused by a downturn in business due to the pandemic required a modification to the incentive plan. Denying each of the grievances, the Arbitrator followed the long line of cases interpreting Article 9 of the basic labor agreement that held that adjustments were not required where the decreases in incentive payments were due to market conditions. This Arbitrator specifically concluded that market forces did not equate to "restricted operations" which was the relevant term in the primary plan at issue in Case #807.

Of greater significance, the Arbitrator's clarifying Award in Case #807, similar to the instant case, addressed the question of whether the newly implemented incentive plan had been

violated (as opposed to whether it required modification under Article 9B of the basic labor agreement). In evaluating that issue, the Arbitrator interpreted the identical language presented in the instant case: "*when weekly production is restricted by management.*" In denying the request to clarify his earlier Award, this Arbitrator found that weekly production changes resulting from a downturn in orders due to the pandemic were not restricted by management.

In this case, the Union carries the burden to prove a contractual violation, and it has failed to do so. The Union cannot prove the Company intentionally or unnecessarily restricted production. The negative impact on incentive payouts was due to the pandemic. The Union's attempts to tie the Primary Incentive Plan to the agreements arising out of the 2010 MOU are unconvincing and must be rejected.

There is no dispute over two key points: (1) that the words "*restricted by management*" are at the center of the Union's grievance, and (2) that the incentive payments were impacted by the lack of customer orders due to the pandemic. The Company's customers were literally shutting down and cancelling orders. With no orders, there was no steel to make. Yet the Union contended throughout this proceeding that a downturn in the market and the resulting diminished levels of steel production were "*restricted by management.*"

The Union's argument is at odds with the long line of cases interpreting Article Nine B and the cases holding that a downturn in market orders does not justify or require the modification of an incentive plan. This Arbitrator recognized and followed that line of decisions in his Cleveland awards.

Moreover, common sense and a plain reading of the words dictate that the Union's position must be rejected. The words require action by management, not a reaction to forces beyond its control. The Company did nothing to unnecessarily or intentionally restrict production. When interpreting unambiguous language, the interpretive principle is to go no further than the language itself, and this Arbitrator applied that principle in his clarifying Award in Case #807, holding that a downturn caused by the pandemic does not equate to a "*restriction by management*" since management did nothing to intentionally or unnecessarily reduce production. That finding controls the outcome in this case.

The Union made various arguments seeking to circumvent the unambiguous language of the Primary Incentive Plan, and each in turn must be rejected.

The Union apparently argues that the 2010 MOU and the furnace priority letter taken together created a commitment to insulate the bargaining unit from the impact of market conditions. Neither document says anything of the sort, and the unambiguous language contained in each document undermines the Union's contention.

The MOU says nothing about maintaining certain levels of production. The document reflects the Company's promise to make capital investments in the plant in exchange for Union compromises on the incentive plan. There is no mention of any guarantee of the level of payment at certain levels in the incentive plan.

The history of the Primary Incentive Plan also weighs against the Union's argument, since the relevant language of the Plan has remained unchanged since 2005. Had the parties intended to change the meaning of those words to mean something else, the parties could have done so, but they did not. The Union's reliance on the quid pro quo effect of the MOU is misplaced; the plain language of the MOU makes clear that the modified incentives were in exchange for the Company's commitment to make capital investments in the plant.

The Union's reliance on the furnace priority letter is similarly misplaced. The Union misses the fact that the purpose of the furnace priority letter was distinct from the purpose of the MOU. The whole purpose of the MOU was to eliminate Burns Harbor's status as a "swing plant" and end the practice of sending work out of the plant. The record suggests that this goal was achieved because the only evidence was the Company's efforts to bring work into the plant.

The purpose of the Primary Incentive Plan is completely different from the MOU and the furnace priority letter. The Primary Incentive Plan tells the parties what the payouts will be based on the level of production at the plant. The Plan even recognizes that incentive payments could be zero if production does not reach a certain level. The Plan contemplates that there may be levels of production inadequate to justify any incentive payment. It is only when the Company does something to restrict production that the Plan provides a minimum payout level. As the evidence shows, that is not what the Company did in this case.

Even if one follows the Union's argument that the MOU and the furnace priority letter require the Company to bring work into the plant, the language in those documents does not say what the Union claims they say. Both documents are silent on any requirement that the Company must import work from other plants to make up for market-driven reductions in orders.

The Union's argument becomes particularly problematic because there is nothing in the MOU or the furnace priority level that says the Company must adjust targets to maintain a level of production. The Plan rejects such a notion, since the targets are already baked into the formula set forth in Paragraph 6 when "*when weekly production is restricted by management.*"

The documents surrounding the communications sent out in 2008 and 2010 that were introduced by the Union do not alter the outcome, and in some ways those documents support the Company's case.

For example, the Company's letter to employees informing them of the potential for layoffs arising out of the 2008 recession and resulting downturn in business used the words "operating in a restricted production mode." The Union may be expected to argue that the use of that phrase equates with "weekly production restricted by management." One does not lead to the other. The former is missing the main point, which is "restricted by what?" A reduction caused by market conditions does not mean that it was caused by management.

The same infirmity exists in Union Exhibit 2, the 2008 announcement of the parties' agreement on a wage minimization plan. The parties used the term "restricted operations" in several places but the meaning of "restricted" and its cause were tied to what the parties identified as "current market conditions." This is in contrast to when operations are restricted <u>by management</u>.

Union Exhibit 3 similarly uses the phrase "restricted and reduced operations" but there is nothing to link any management actions that caused the restrictions. In fact, the very same words – "restricted operations" – were deemed by this Arbitrator in Award #807 not to be the equivalent of market conditions.

Union Exhibit 3 is important for a different reason since its introductory paragraph recognizes the parties' efforts to make Burns Harbor more competitive within ArcelorMittal. The document also reflects the change in the plant's status away from being a "swing plant." This change aligns with the Union's understanding that the MOU and furnace priority letter were intended to address work leaving the plant rather than work being imported into the plant. In that light, the use of the term "restricted by management" makes much more sense as a counterweight to when the Company chooses to move work out of Burns Harbor. And as the evidence showed in this case, that did not happen. No work left Burns Harbor during this time, and the Company brought work into Burns Harbor during this time.

It is noteworthy that when the parties wanted to address downturns in the market as affecting an incentive plan, they knew how to do so. That is the relevant takeaway from Arbitrator Vonhof's award in the Finishing Incentive case from 2021. The incentive plan in that case contained the following language: "If the plan is operating at a reduced level (TBD), the plan will pay 20%." Thus, when the parties wanted a modification to the incentive payouts due to market conditions, they crafted language to do so, and that language is different from the language used in the Primary Incentive Plan.

The contract language unambiguously did not require the Company to implement the payout levels in Paragraph 6 of the Primary Incentive Plan. The Union has failed to meet its burden of proof to show a contract violation, and the Grievance must be denied.

FINDINGS AND DISCUSSION

The essential underlying facts are largely undisputed 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 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.

As both parties recognized in their presentations and post-hearing submissions, the undersigned has had several occasions recently to address other incentive plans involving the Company (or its predecessor) and the Steelworkers. In particular, I have had occasion to decide cases where the economic effects wrought by the pandemic have resulted in the reduction of production, which then had the effect of reducing or eliminating any incentive payments. Thus, as the parties seem to agree, the instant dispute does not come before me on a blank slate.

This case turns on the meaning of the phrase, "When weekly production is restricted by Management…" The Company readily admits that it did not schedule the affected employees to a level sufficient to trigger the incentive payments. The Company points out that this 'decision' not to schedule production was actually nothing more than a forced reaction to the cancellation of significant numbers of customer orders. The Company posits that the relevant language of Paragraph 6 is only triggered by a deliberate or intentional (or unnecessary) Company decision to

reduce production, and the Company maintains that the evidence in this case makes clear that did not occur.

The Company relies heavily on my earlier rulings involving the incentive plans at the Company's Cleveland, Ohio facility. In particular, the Company points to my February 23, 2021 ruling clarifying the Award in Case #807. In that case, I confronted the issue of the proper interpretation of exactly the same language as at issue herein. I held that the phrase "is restricted by management" was not triggered where the decision of management to schedule less production was due solely to market conditions. The Company argues that the same result is compelled in the instant case.

The Union does not directly challenge the ruling I made in Case #807 involving the Cleveland plant. The Union maintains that any interpretation of the key phrase in Paragraph 6 ("When weekly production is restricted by Management...") must be resolved by resort to the promises made in the 2010 MOU and the 2010 MOA. The Union maintains that upon a consideration of these documents and the background leading up to these agreements, there is a contractual promise on the part of the Company to bring production from other locations (with the exception of the #7 furnace at Indiana Harbor) to bolster production at Burns Harbor to a level that would result in payment of the incentives under the Primary Incentive Plan. Put in slightly different words, the Company had a contractual obligation to give priority in production to the C and D furnaces at Burns Harbor over all other plants with the exception of the #7 furnace at Indiana Harbor. The Union would have me conclude that the Company made a decision not to adjust production in this manner, so that the relevant language of Paragraph 6 is actually triggered in this case (and not a product of market conditions).

As I understand the Union's argument, the MOA gives the Burns Harbor C and D furnaces priority over all other furnaces except for the #7 furnace at Indiana Harbor. Therefore, in the Union's view, if overall production within the Company could be maintained at a level where #7, C and D were operated full, even at the expense of moving production from other locations, that is what was required in this case. The Union maintains that the MOU, which involved a major giveback of incentive payment rates in exchange for capital improvements to the Burns Harbor plant, coupled with the move away from treating Burns Harbor as a swing plant, fully supports this reading of the MOA. The Union insists that the communications issued by the Company in

connection with the other activities in 2008 and 2010 to address the economic downturn add further support to this tradeoff ("quid pro quo").

The Company firmly disputes the notion that the MOU and MOA combined to create any sort of guarantee of a level of production. In addition, the Company responds at a factual level that even assuming the Union's argument had any credence, the record in this case shows that the Company brought work into the Burns Harbor plant during the time frame in question and the Company did not move any work out of the Burns Harbor plant.

If the issue presented in this case was limited to whether the reduction in production caused by the pandemic and resulting decrease in customer orders was somehow a restriction in weekly production by management, there is no question that I would follow my previous ruling and the rulings of numerous other arbitrators in holding that it is not. The phrase "restricted by management" certainly implies a measure of intent, whereas a decision to reduce the scheduled work to correspond with the reduce orders for product is not an intentional act in that sense.

As noted above, the Union argues that in this case there are additional promises and commitments that must be considered. In the Union's view, the interplay of the MOU and the MOA set a guarantee on the part of management. That guarantee is that production at other locations (except for #7 Indiana Harbor) must be shifted if necessary to keep Burns Harbor C and D furnaces operating full. The Union did not offer specific production figures to show that sufficient work existed throughout the Company to achieve this result. The Union instead argues that so long as other furnaces were running during this time (and Indiana Harbor #7 was operating full), there was work that could have been moved into Burns Harbor to keep these furnaces operating at a level sufficient to require incentive payments at the established levels in the Primary Incentive Plan.

It is possible that the Union believed back in 2010 that it was negotiating a guarantee of the level of production at Burns Harbor that would have required the Company to transfer work into the plant to maintain production at a level to require incentive payments under the Primary Incentive Plan. Unfortunately, there is absolutely nothing in the wording of either the MOA or the MOU to that effect. As the Company accurately points out, the quid pro quo was a reduction in incentive payment rates in exchange for a commitment of capital expenditures and a change away from treating the plant as a swing plant. There is nothing in that exchange to suggest that anyone

contemplated at the time that they were creating a guarantee that would require the Company to move work from other locations to maintain production at Burns Harbor.

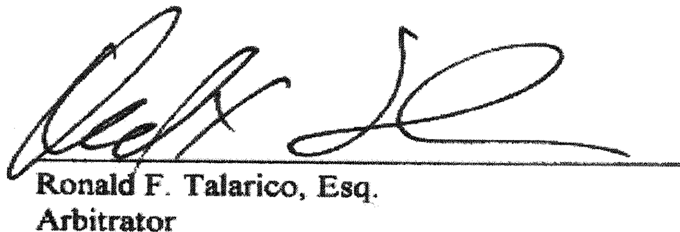
My authority is to interpret the documents before me, and in particular the Primary Incentive Plan. I do not have the authority to add to or take away from the promises encompassed in that Plan. There is certainly no authority to infer from the reading of the MOA and/or the MOU a guarantee of such dimensions when both documents make no mention of any such guarantee.

Notwithstanding the Union's arguments, this case must be resolved under the same rationale that I applied in the clarifying award to Case #807. The operative language of Paragraph 6 of the Primary Incentive Plan is not triggered by a reduction in production that corresponds to a reduction in customer orders. There is no dispute in this case that is exactly what happened. There is no contractual support in either the basic labor agreement, the Primary Incentive Plan, or the MOU or MOA, for the Union's argument that the parties established a guaranteed level of production to sustain the Primary Incentive Plan.

For all of the above reasons, there is no violation of either the basic labor agreement or the Primary Incentive Plan and the Grievance must, therefore, be denied.

AWARD

The Grievance is denied.



Date: June 23, 2023
Pittsburgh, PA

Ronald F. Talarico, Esq.
Arbitrator