IN THE MATTER OF ARBITRATION)
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CLEVELAND-CLIFFS STEEL LLC)
)
)
and)
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)
UNITED STEEL, PAPER AND FORESTRY,)
RUBBER, MANUFACTURING, ENERGY,)
ALLIED INDUSTRIAL AND SERVICE)
WORKERS INTERNATIONAL UNION,)
LOCAL 1010)

Case 143

Richard Samson, Esq. & Margaret Foss, Esq., for the Employer
Jacob Cole, for the Union
Before Matthew M. Franckiewicz, Arbitrator

OPINION AND AWARD

This arbitration case involves both procedural and substantive issues. The procedural issue concerns whether the Company complied with the expedited arbitration procedure specified in Article Two Section F (7) of the Basic Labor Agreement. The substantive issue concerns whether the Company acted within its rights under Article Two Section F (2) (b) (1) in contracting out the repair of Segment 2-3-2.

A hearing was held on October 6 and October 16, 2023 in East Chicago, Indiana. Both Parties examined and cross examined witnesses and provided documentary evidence. The Parties offered their summations at the close of the hearing. With the exception of a case citation offered by the Union at the hearing, no provision was made for post-hearing submissions, and guided by the prohibition on briefs in Article Five Section I (8) (a) (2), I have not considered the written revisions to their opening and closing statements that the Parties offered after the close of the hearing. The Parties agreed to waive the requirement for a decision within 48 hours (see Article Two Section F (7) (c) of the Basic Labor Agreement), and agreed that I would have until November 15 to issue a decision including a full opinion.

Contract Provisions Involved

ARTICLE TWO - UNION SECURITY

Section F. Bargaining Unit Work

1. Guiding Principle

a. The Guiding Principle is that the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and

ability) of performing (Bargaining Unit Work), unless the work meets one (1) of the exceptions outlined in Paragraph 2 below.

b. Any individual or entity other than an Employee who performs Bargaining Unit Work shall be referred to herein as an Outside Entity.

2. Exceptions

In order for work to qualify as an exception to the Guiding Principle, such work must meet all aspects of one (1) of the definitions outlined below and the Company must be in full compliance with all of the requirements of the particular exception as outlined below.

* * *

b. Work Performed Outside the Plant or its Environs

(1) Fabrication and Repair Work

Fabrication Work is the creation outside of the plant or its environs of items or parts used in the Company's business which are not themselves, either directly or after additional work is performed on them, sold to customers. Repair work is the repair, renovation or reconstruction of those items.

Fabrication and Repair Work may be performed by Outside Entities only where the location of the work's performance is for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity.

In determining whether a meaningful sustainable economic advantage exists, neither lower wage rates, if any, of the Outside Entity, nor the lack of necessary equipment (unless the purchase, lease or use of such equipment would not be economically feasible) shall be a factor.

5. Notice and Information

a. Prior to the Company entering into any agreement or arrangement to use Outside Entities to perform Bargaining Unit Work, the Company will provide written notice to the Bargaining Unit Work Committee in sufficient time to permit a final determination, using the Expedited Procedure, of whether or not the proposed use of Outside Entities is permitted. Such notice shall include the following:

(1) location, type, duration and detailed description of the work;

(2) occupations involved and anticipated utilization of bargaining unit forces;

(3) effect on operations if the work is not completed in a timely fashion; and

(4) copies of any bids from Outside Entities and any internal estimating done by or on behalf of the Company regarding the use of the Outside Entities.

b. Should the Union believe a meeting to be necessary, a written request shall be made within five (5) days (excluding Saturdays, Sundays and holidays) after receipt of such notice. The meeting shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. At such meeting, the parties shall review in detail the plans for the work to be performed and the reasons for using Outside Entities. The Union shall be provided with all information available to the Company concerning the use of Outside Entities at issue.

c. Should the Company fail to give notice as provided above, then not later than thirty (30) days from the later of the date of the commencement of the work or when the Union becomes aware of the work, a grievance relating to such matter may be filed.

7. Expedited Procedure

In the event the Union requests an expedited resolution of any dispute arising under this Section, it shall be submitted to the Expedited Procedure in accordance with the following:

a. Within three (3) days (excluding Saturdays, Sundays and holidays) after the Union determines that the Bargaining Unit Work Committee cannot resolve the dispute, the Union may advise the Company in writing that it is invoking this Expedited Procedure.

b. An expedited arbitration must be scheduled within three (3) days (excluding Saturdays, Sunday and holidays) of such notice and heard at a hearing commencing within five (5) days (excluding Saturdays, Sundays and holidays) thereafter.

c. The arbitrator shall render a decision within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing.

d. Notwithstanding any other provision of this Agreement, any case heard in the Expedited Procedure before the work in dispute was performed may be reopened by the Union if such work, as actually

performed, varied in any substantial respect from the description presented in arbitration. The request to reopen the case must be submitted within seven (7) days of the date on which the Union knew or should have known of the variance.

9. General Provisions

a. Special Remedies

(1) Where it is found that the Company (a) engaged in conduct which constitutes willful or repeated violations of this Section or (b) violated a cease and desist order previously issued by an arbitrator, the arbitrator shall fashion a remedy or penalty specifically designed to deter the Company's behavior.

(2) With respect to any instance of the use of an Outside Entity, where it is found that notice or information was not provided as required under Paragraph 5 above, and that such failure was willful or repeated and deprived the Union of a reasonable opportunity to suggest and discuss practicable alternatives to the use of an Outside Entity, the arbitrator shall fashion a remedy which includes earnings and benefits to Employees who otherwise may have performed the work.

The Facts

On August 30, 2023, a loss of containment on the continuous caster occurred, causing a leak of liquid steel. There is a technical term in the industry for this situation, but it is considered bad luck to use it, and in this decision I shall refer to the "event."

A typical heat involves about 240 metric tons of steel. The Company lost 94 heats as a consequence of the event. At a price of about $697 per ton, this amounted to over $17 million in lost production.

Vastly oversimplified, the continuous casting process starts with molten metal at the top of the caster, which passes over a series of segments and solidifies in the process from the outside in, until it emerges as a solid slab, of roughly 30 to 40 metric tons. Each caster serves particular customers, so that if one caster stops production, its orders cannot be shifted to a different caster.

There are ten segments per strand (numbered 1 to 10 from top to bottom on the caster), and a caster may have one or two strands. The caster at issue is a double strand caster in 4 SP (Steel Producing). Each segment is unique, with a different radius: a segment cannot simply be taken out of one position and installed in a different position in the caster sequence. The segments are quite large, as much as 40 metric tons.

The event of August 30, 2023 involved strand 2, and affected the segments in positions 1 through 6 of that strand. This was not the first such event to occur in recent years. Two events occurred in August, 2020, which were the subject of an arbitration decision discussed in detail below. More recent such events

occurred on March 6, 2023, damaging segments 1 - 4, and on April 6, 2023, damaging segments 1 and 2. There was testimony that the current event was the first which affected segments as far down as segment 6 and that the worst such event previously affected segments 1 through 5. (This seems at odds with the findings of the 2020 arbitration decision that six segments were affected by the event of August 26, 2020.)

After the March and April 2023 events the Company, with the Union's agreement, contracted out repairs on Segments 2-3-1 and 2-3-8 to be prepared for positions 2 and 3.

In the present case the Company ultimately changed segments 1, 2, 3 and 6. The time it takes to repair Segment 2 or Segment 3 in house varies from about 6 to about 10 weeks depending on the amount of damage involved.

When the event occurred, the Company shut down both strands, but after about 3 ½ hours it restarted one strand, where the segments apparently had not been damaged. The following morning it shut down both strands, since production cannot continue while the repairs on the caster are being performed. The caster was back in operation on September 2.

Four segments were removed for repair. As noted above, the current case involves only Segment 2-3-2. Segment 2-3-2 was in the No. 3 position in the caster. The Company also contracted out repairs to Segment 2-3-7, which was in position No. 2 in the caster, but this action is not involved in the current case, since the Parties reached an agreement regarding the contracting out of Segment 2-3-7. As I understand it, Segment 2-3-7 was prepared for position 2 by the contractor. The Parties agreed to the contracting out of Segment 2-3-7 on September 7, and the segment was sent to the contractor on September 7. (The Parties offered evidence regarding their discussions of contracting out of the two segments. I do not recount this evidence, for reasons expressed below in this decision.)

In the designation 2-3-2, the first two digits indicate that the particular segment can be configured for position 2 or position 3 and the last digit identifies the specific segment.

The Company tries to have two spares for positions 1 through 3 and one spare for the other positions. But in recent years the goal of two spares for positions 2 and 3 has not been accomplished, and the Parties stipulated that during the last five years most of the time there have not been two spares for position 3. At times during late 2022 and early 2023 there were no spares for position 3. After the event there was one spare for position 2 but none for position 3.

There are two stands on which segments are aligned. Each of these operates on segments for a different set of positions. So two different segments could not both be aligned for position 3 at the same time. Segment 2-3-4 was in the stand at around the time the contracting occurred, being readied for Position 3. Work on Segment 2-3-4 was completed in early October.

The Company's in house segment repair work is performed in the Caster Maintenance Aisle. Approximately 21 bargaining unit employees work in the Caster Maintenance Aisle. During the relevant time frame, the Company was offering unlimited overtime to employees in the Caster Maintenance Aisle.

According to Caster Maintenance Aisle Section Manager Daniel Michaels, in making the decision to contract out, the Company looked at manpower, parts on hand, and the status of the segments in the shop, and concluded that it needed help to minimize the risk involved in having no segment available for position 3.

The Company first addressed the issue of contracting out Segment 2-3-2 with the Union on September 20, 2023. The Parties met on September 21, but no agreement was reached.

The requisition notification for the contracting out is dated September 21, 2023. The requisition lists an expected completion date of October 13, 2023, and an estimated cost of $50,000. Although the notification states that the contracting is "By Agreement" there is no dispute that it is inaccurate and that there was in fact no agreement. The Union concedes that as of September 21, it knew that the Company viewed this as a fabrication and repair case. The Parties met on September 21 but did not reach agreement for the contracting out of Segment 2-3-2.

The Company did send Segment 2-3-2 to the contractor on September 21. Also on September 21, 2023 the Union invoked the expedited procedure under Article 2 Section F (7) of the Basic Labor Agreement. The Union's notice stated "The Union is invoking the expedited procedure per the Basic Labor Agreement, Article 2 Section F.7. The requested remedy for this violation is Make Whole, Cease, and Desist. The work in dispute is identified with the following notice: EM089622." The Union clarified the notice for expedited arbitration later that day to identify the segment involved as Segment 2-3-2.

That same day, September 21, the Union submitted a request for information. This request was not answered before the beginning of the hearing in this case. (The Union sent a second, more specific information request on September 25, to which the Company did respond.)

Contract Coordinator Lonnie Asher, who is responsible for scheduling expedited arbitrations, sent the Parties an email on September 25 stating that he had received the following dates for an expedited arbitration hearing: September 26, 27 and 29, and October 2, 6, 9, 10 and 16. If I correctly understand the Parties' calculation of dates under Article Two Section F (7) (b), the three day period to schedule a hearing would end on September 26, and the five day period to commence a hearing would end on October 3.

Union Staff Representative Jacob Cole responded to Asher's email on September 25, stating that he was available September 27 and 29, and October 2, 6, 10 and 16. The Company apparently did not respond to Asher's September 25 email until September 28, stating: The only date that may work for us is October 6, but even that date has a conflict with one person. As an alternative, is October 11 or October 13 available?"

As noted at the outset of this decision, the arbitration hearing did commence on October 6.

On September 26 representatives of the Parties met and discussed contracting generally and the Union's complaint that the Company was not partnering on contracting issues, but it appears that there was no specific discussion of the work on Segment 2-3-2.

At around this time Segment 2-3-4 was on the stand being aligned, so that Segment 2-3-2 would have to wait for its turn on the stand to be aligned. (Segment 2-3-4 was finished around October 2.) Segment 2-3-7 (to be aligned for position 2) had been contracted out on September 7, pursuant to an agreement between the Parties for this specific contracting out. When the agreement between the Parties was reached regarding Segment 2-3-7, the Company indicated it did not intend to contract out another segment. At the time Segment 2-3-7 was contracted out, the contractor said it could only perform repairs on one segment at a time, but partway through the repair process the contractor said that it could take on another segment as well. The repairs to Segment 2-3-7 have been completed by the contractor and the Company estimates that work on Segment 2-3-2 will be completed on October 13. The Company estimated that the contractor could complete

work on Segment 2-3-2 in 2-3 weeks, but performing the work in house would take 6-8 weeks, although there is some dispute in this regard.

Previously on April 11, 2013 the Union had invoked expedited arbitration in another case, although the notice does not identify the specific work involved. The Union's notice states:

> The work in dispute is identified with the following notice number: RT735047.
>
> The Union is invoking the expedited procedure per the Basic Labor Agreement, Article 2 Section F.7. For the Company's violation of the BLA by not offering "all reasonable and appropriate requested overtime to all qualified Employees". Without the offering of overtime, the Company cannot use Outside Entities to perform Surge Maintenance Work.
>
> Also, the Company is in violation of the Basic Labor Agreement by entering into an agreement or arrangement with Outside Entities before the final determination was made. The Union requested a meeting pertaining to this notice per the BLA however, the meeting never took place.
>
> The requested remedy for this violation is Make Whole, Cease, and Desist. Based on the work not being completed yet, the Union is insisting the timelines under Article 2 Section F.7. are followed.

In another recent case involving contracting of MER Locomotive Truck Rebuild, the Union sent the following notice:

> The Union is requesting a meeting pursuant to Article 2 Section F.5.b. for the contracting out notice that is attached. The Union is insisting the timelines are followed. Please inform our committee when we can schedule this meeting.

Issue

The Union would frame the issue as: Did the Company's procedural violations surrounding the contracting out of Segment 2-3-2 meet the definition of a willful violation; if there is no procedural violation, did the Company properly contract out Segment 2-3-2 according to the bargaining unit work provisions of the Basic Labor Agreement.

The Employer would frame the issue as: Has the Employer proven that its subcontracting of Segment 2-3-2 met the fabrication and repair exception set forth in the Basic Labor Agreement and if not, what is the appropriate remedy.

Position of the Union

Expedited Arbitration Procedure

The Union asserts that before entering into an agreement with a contractor, the Company is obligated to give the Union written notice in sufficient time to permit a determination of whether the contracting out is permitted, and that such notice is to include the occupations involved, the effect on operations, and copies of bids. Further, the Union maintains that a hearing under the expedited procedure is to take place before the work is contracted out. It submits that in this case the Employer did not do this but unilaterally arranged to have the work performed the same day it notified the Union, taking the position that it was going to send the work out and would not agree to anything.

It asserts that it invoked the expedited arbitration procedure on September 21, that potential hearing dates were provided on September 25, but the Company said its earliest availability was October 6.

It stresses that the Parties agreed to the expedited process and it regards the Company as having made no good faith effort to have the case heard within the time frame allotted.

The Union further complains that it requested information on September 21, but its request was never complied with.

The Union urges that the Company committed procedural violations which should be considered willful. It notes that special remedies are appropriate for willful or repeated violations.

As a remedy for its expedited arbitration claim, the Union seeks a cease and desist remedy.

Fabrication and Repair Work

The Union maintains that the Company has not met its burden to show a fabrication and repair work exception. It emphasizes that under the Basic Labor Agreement there is no "emergency" exception.

It disputes that the Company truly has a target of two spare segments each for position 2 and position 3, noting that the Company regularly does not have two spares for position 3. It considers that the amount of time the caster was down in August and September resulted from the time it took to repair the caster and not from the lack of spares.

It insists that bargaining unit employees were capable of and were performing repairs on Segments 2-3-4 and 2-3-5, and it faults the Company for specifying that Segment 2-3-7 (which was contracted out pursuant to agreement) was to be prepared for position 2 rather than position 3. It calculates that the Company had one spare for position 2, with Segment 2-3-7 due to return soon and Segment 2-3-4 being finished in the Caster Maintenance Aisle with Segment 2-3-5 to follow, after which the Company would have had two spares for both position 2 and position 3. It views the spares situation as of September 21 to be business as usual, with the same number of spares as had existed in previous situations.

The Union questions why at the time the Company proposed contracting out Segment 2-3-7, it did not also propose contracting out Segment 2-3-2, but instead stated that the work on Segment 2-3-2 would be done in house, only to reverse itself on this.

It considers that the contracting out of the two segments cost about $100,000, about the same as upgrading the stands to increase the repair capability of the Caster Maintenance Aisle. It criticizes the Company for having a fixed determination to contract out no matter what. It questions why the Company would seek the Union's agreement to contract out if in fact the Basic Labor Agreement authorized it to do so.

It disputes any claim that bargaining unit employees would have taken up to 10 weeks to complete segment repairs, and avers that it would have taken no longer than six weeks to complete repairs in house. It estimates that completion of the two segments (2-3-4 and 2-3-5) being worked on in house could have been accomplished in 3 - 5 weeks.

It distinguishes the decision by Arbitrator Ronald Talarico relied upon by the Company since that case involved an "abnormal situation" with back-to-back events and that there the Caster Maintenance Aisle lacked the capacity to work on all the damaged segments.

As a remedy for this alleged violation of the Basic Labor Agreement, the Union seeks a cease and desist and make whole remedy. As to the latter, it seeks that an amount equal to all money paid to the contractor be distributed to bargaining unit employees, and that $0.15 per hour worked by the contractor employees be paid to the Institute for Career Development.

Position of Management

Fabrication and Repair Work

The Company does not raise a "capability" argument, and explicitly disclaims reliance on employee skills and abilities.

It contends that it acted in good faith out of an urgent need to contract out the work. It argues that it met the conditions specified in Article Two Section F (2) (b) (1) in that this was fabrication and repair work, it had a bona fide business purpose in contracting out the work, and there was a meaningful sustainable economic advantage in having the work performed by an outside entity in that the Company loses millions of dollars a day in revenue if the caster is idle. It submits that it could not live under the threat of another event, and the time to perform the work in house would have been too great to undertake such a risk, since if a second event occurred the caster would be down for weeks. It considers the risk as more than theoretical, stressing that this was the third such event in less than 6 months, suggesting that another such had to be anticipated and prepared for.

The Company emphasizes that the segments are critical to the operation of the caster, and that during the roughly three days that the caster was down, it lost over $17 million in lost production. It submits that after the event there were no spares for position 3, which imposed an unacceptable risk that the caster would be down for weeks rather than days if another event occurred, and that it would take the Caster Maintenance Aisle employees up to 10 weeks to complete repairs for a spare versus 2 - 3 weeks by the contractor. It regards the Union's assertions that it should have aligned Segment 2-3-7 or Segment 2-3-5 for position 3 as

ineffective since the repairs would still have taken unacceptably long, even with the Caster Maintenance Aisle on unlimited overtime. It notes that at the time of the contracting there were already segments on each stand, which could not have been removed and replaced without losing additional time and the progress already made on those segments. It further observes that position 2 is the most susceptible to damage. It considers the completion of the work on Segment 2-3-4 as too uncertain to bet on.

It rebuts the Union's claim that it would not have sought an agreement if it felt it had the right to contract out, maintaining that an agreement is always better than an argument.

It insists that these factors demonstrate a bona fide business purpose.

The Company maintains that in a 2020 case involving nearly identical facts and circumstances, Arbitrator Ronald Talarico denied the Union's claim. It notes that Talarico did not rely on whether there was an agreement to contract, but found that the Company had met the fabrication and repair exception. It submits that it used the Talarico decision as a "roadmap" that it was following the Basic Labor Agreement.

While there is some difference of opinion as to how long repairs would take to complete in house, the Company points to Talarico's finding that repairing a segment in house would take about 6 weeks and that a delay of this magnitude was enough to warrant contracting out the repair.

It asks that the claim be denied on the merits.

Expedited Arbitration Procedure

The Employer denies any violation of the expedited arbitration procedure. It urges that often the Union does not seek to impose the time lines and that when it does, it tells the Company so, but in the current demand there was no reference to time lines. It faults the Union here as playing a game of "gotcha."

It avows that it had already sent the segment to the contractor when the Union invoked expedited arbitration, but the point of expedited arbitration is to have a decision before the work is sent out.

The Company emphasizes that some of the dates offered by Contract Coordinator Lonnie Asher were beyond the five day hearing date deadline and that the Union's response indicated acceptance of some dates after the deadline. It further posits that the September 26 meeting (on one of the dates offered by Asher) could have resolved the dispute.

It insists that it acted in good faith to schedule a hearing as expeditiously as possible, so that no "special remedy" is in order. It objects to any proposed make whole remedy based on the procedural claim.

It asks that the claim for relief under Article Two Section F (7) be denied.

Analysis and Conclusions

As noted earlier, the Parties agreed that the Employer could contract out the repairs on Segment 2-3-7 in return for certain considerations made to the Union. Accordingly, the contracting out of Segment 2-3-7 is

not involved in this case. No agreement was achieved regarding the contracting out of Segment 2-3-2, and while the September 21, 2023 notification to the Union states that the contracting out was "By Agreement," it was obvious to both Parties that this statement was incorrect (probably caused by cutting and pasting from the notification regarding Segment 2-3-7). This misstatement did not mislead the Union.

Although both Parties offered evidence as to their discussions regarding contracting out of Segment 2-3-2, in my view the only pertinent observation is that no agreement was reached. It is not for an arbitrator to assess the reasonableness of either Party's position in the negotiation process, nor to opine which Party was more at fault for the failure to reach agreement on the contracting. All that matters in this regard is that the Parties did not come to an agreement regarding the contracting out, which is why we are here.

Expedited Arbitration Procedure

As stated earlier in this decision, the Parties themselves calculate that since the Union's invocation of expedited arbitration came on Thursday September 21, the three day period to schedule a hearing ended on Tuesday September 26, and the five day period to commence the hearing ended on Tuesday October 3.

It is readily apparent that the Company did not comport with this time frame. Contract Coordinator Asher responded on September 25, within the three day scheduling period, offering potential arbitration dates, four of which were within the further five day commencement period. The Union timely replied that same day, accepting three of the four offered hearing dates within the commencement period.

The Company, however did not even respond to Asher's email until September 28, which was beyond the three day scheduling period. The Company's failure to provide a timely response necessarily meant that the hearing could not be scheduled within the required three business days of the Union's invocation of the process.

Moreover, when the Company did submit its untimely response, it did not accept any of the proposed hearing dates within the five day period to commence the hearing, but announced that its earliest (potential) availability was not until October 6, outside the required time frame for the beginning of the hearing. It did not propose any alternative date within the five day period for beginning the hearing.

Article Two Section F (7) of the Basic Labor Agreement imposes a very ambitious and strict time line for the expedited processing of disputes over contracting out. The representatives of both Parties are hardly sitting around with nothing to do, and compliance with these time requirements will often require the representatives to alter their personal schedules.

Nevertheless, these time lines are ones to which the Parties themselves have committed, and they have done so unambiguously. In the range of language parties can draft to express the strength of an obligation (may, should, shall, will, must) the Parties have chosen the strongest possible word I can think of ("must") to specify how strongly the Parties are expected to adhere to the time lines set forth in this paragraph. A hearing "must be scheduled" within three business days, and the hearing must commence within five additional business days. Article Two Section F (7) commands the Parties to drop everything, no matter how inconvenient, so that they can commence the hearing with the requisite promptness.

This commitment is in keeping with the Guiding Principle set forth in Article Two Section F (1), emphasizing the importance the Parties recognize in the principle of preservation of bargaining unit work. A make whole remedy after the work has been performed elsewhere is simply not the same as a determination whether the work can be contracted out in the first place.

It may well be that there are instances when the Parties, despite their best efforts, cannot schedule a hearing to begin within the required schedule. There may be no arbitrator available within that time frame. That was not the case here. An arbitrator was available on four of the days that fit the contractual time table. The Union arranged to make itself available on three of those dates. The Company did not arrange to make itself available on any of them. Necessarily, therefore, the hearing did not begin within the period demanded under the Basic Labor Agreement.

It does not matter that the arbitrator also expressed availability on additional dates beyond the five business day period. But for that offer, the hearing would have been delayed even further.

The Company must act with the same sense of urgency in arranging for expedited arbitration that it does in accomplishing the repair itself. This is so regardless of the strength of the Company's argument that it is entitled to contract out the work involved. The Company failed to demonstrate the contractually required diligence in arranging for a prompt hearing.

The Employer maintains that because on two prior occasions the Union explicitly insisted on adherence to the contractual time lines, the Union was thereafter always required to add this additional phrasing to its invocation of expedited arbitration. I disagree. The Union need not demand adherence to the time lines. The Basic Labor Agreement itself demands adherence to these time lines.

In suggesting that the time constraints imposed by the Basic Labor Agreement apply only if the other Party insists on them, the Company has it exactly backwards. The time constraints imposed by the Basic Labor Agreement apply unless the other Party waives them.

While it is possible to construe the Union's occasional reference to the time lines as lulling the Company into believing that only when it does so is the Company obligated to adhere to these time lines, it is more plausible to consider that the Union, having reminded the Company twice, felt no further need to keep doing so. In any event, if the Company was unclear as to its duty of promptness, it was incumbent on the Company to ask rather than assume whether the Union demanded adherence to the contractual time requirements.

Based on the above I conclude that the Company has violated the Basic Labor Agreement by failing to comply with the time constraints demanded under the expedited procedure specified in Article Two Section F (7).

Arguably, the above facts would support a conclusion that the Company had violated Article Two Section F (5) (a) by failing to provide notice of contracting in a time frame that permitted itself to adhere to the time requirements of Article Two Section F (5). See United States Steel Corporation, Case No. 43,574, 2004 BNA LA Supp. 118618 (David Petersen, 2004). But since the Parties have treated this as a case arising under Article Two Section F (7), I make no findings in this regard, and in any event the remedy would be the same.

There is no indication that the Company previously violated Article Two Section F (7). The Union asserts that the violation is nonetheless "willful." However, inasmuch as it does not seek any special remedy beyond a cease and desist directive, I find it unnecessary to determine whether this amounts to a willful violation.

In keeping with the above, I shall grant the remedy requested by the Union and direct the Company to cease and desist from failing to adhere to the time requirements imposed by Article Two Section F (7).

Fabrication and Repair Work

The Company claims that the actual contracting out was authorized under the exception specified for fabrication and repair work under Article Two Section F (2) (b) (1), specifically that the work at issue was "for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity."

In this regard the Company relies heavily upon an arbitration award issued in 2020. For the reasons expressed below, I agree with the Company that the current case is sufficiently similar in material respects that the prior case determines the outcome in the current case.

On December 8, 2020 Arbitrator Ronald F. Talarico issued an award between the Parties in a case involving a similar "event" that occurred in 2020. Although the Company at the time was "ArcelorMittal USA LLC Indiana Harbor," there is no dispute that Cleveland-Cliffs is a successor to ArcelorMittal at this same location. Further I have compared the contractual language quoted by Arbitrator Talarico with the current Basic Labor Agreement, and it is identical. Arbitrator Talarico's decision therefore must be regarded as a precedent binding on the Company, the Union, and the current arbitrator.

The case before Arbitrator Talarico involved a similar event at 4 SP, actually two similar events that occurred on August 2, 2020, affecting three segments, and August 26, 2020, affecting six segments. Apparently the segments impacted by the first event were all repaired in house, but on August 27, 2020 the Union agreed to the contracting out of repairs on Segment 2-3-1. On September 1, 2020 the Company proposed to contract out the repairs on Segments 2-3-7 and I-1-8, but the Union maintained that no agreement was reached. The Company did contract out the repair work on these two segments. Repairs on the two segments were completed in about one week and two weeks, respectively. The decision states that one strand of the caster was down for five days. It would therefore appear that with the installation of spare segments the caster was back in operation before the work at issue was contracted out.

The Caster Maintenance Aisle was on unlimited overtime, and the operation of the Caster Maintenance Aisle, including the two stands, as described by Arbitrator Talarico seems substantially the same as in the current case.

On its notice to the Union, the Company incorrectly listed the exception as Surge Maintenance (Article Two Section F (2) (a) (2)) . On this point, Arbitrator Talarico stated:

> Although the notice was technically incorrect, I find that the Company acted in good faith to comply with the notice requirement. An inadvertent mistake of this nature did not render the notice inadequate. After hearing the testimony from both sides, I am satisfied that the parties understood that this was not Surge Maintenance work that would be performed

> inside the plant. There is no question that the Union understood that the work was being sent out of the plant, a point that was fundamental to the Union's position in this dispute. * * * Accordingly, I find that the Company, by making an inadvertent data entry error on the notice, did not, in this case, violate Article Two, Section F.5."

As a preliminary consideration, the notice provided in the earlier case was inaccurate as was the one in the current case. In this regard Arbitrator Talarico held that an incorrect but not misleading notice did not affect the legitimacy of the contracting out, and that conclusion applies with equal force in the present case.

On the merits of the dispute, Talarico concluded that even if no agreement was reached to contract out the work (a matter which was in dispute), the Company satisfied its burden to demonstrate a Fabrication and Repair Work exception under Article Two Section F (2) (b) (1). In this regard, Talarico stated:

> In order to deal with the scope of the repairs required by these multiple breakouts, whoever was going to do the repairs would not have had sufficient room within the plant. In addition, the evidence showed that repairs could only have been affected on two segments at a time because of the limited capacity of stands within the plant. * * * Overall, the Company's evidence established that there was insufficient space within the plant to effectively perform this work without expensive overhauls and additional delays.

Of particular relevance to the current case, Talarico continued:

> The credible evidence further showed that the Outside Entity was able to turn the work around within one week for the first segment and an additional week for the second, whereas the same work if performed by the bargaining unit inside the plant would have required a minimum of six weeks. The estimated cost of the lost production during those six weeks would have approached thirty million dollars. It is entirely reasonable to conclude from that evidence that the Company would have sustained additional losses in the magnitude of thirty million dollars by having the work performed by bargaining unit personnel within the plant. Given the credible evidence of the huge economic disparity in the choices facing the Company, it is almost self-evident that the path of sending this work to an Outside Entity (and avoiding a loss of $30,000,000) was for a meaningful, sustainable economic advantage.

Talarico noted that:

> The Union disputed the Company's economic claims on the basis that the Company's claims were purely hypothetical at the time the decision was made to send the work out.

In comparing the prior case to the current one, I recognize the identity of the location, the type of work at issue, and the contractual provisions involved. The prior case resulted from two events during August 2020 in 4 SP, damaging a total of 9 segments. The current case also involves an event in 4 SP, resulting in damage to 6 segments. The operation and capabilities of the Caster Maintenance Aisle as described by Talarico seem essentially the same as in the current record. Arbitrator Talarico concluded that the relevant standard was the "two-pronged contractual test" for the fabrication and repair work exception, and that the Company has satisfied both prongs. The current case calls for application of the same contractual test.

The essence of Talarico's holding that the Company satisfied the fabrication and repair exception was that the contractor could accomplish the repairs to the damaged segments much more quickly than the Castor Maintenance Aisle could, and that time was of the essence in completing the repairs.

Talarico found that repairs to the two segments involved in the prior case took about one and two weeks respectively, as compared with over six weeks to have the work completed by bargaining unit employees. The current record suggests a time frame of 2 - 3 weeks for the contractor versus six weeks or more for performing the work in house. Although the difference is not as great in this case, it nonetheless appears that performing the repair to Segment 2-3-2 in house would take at least twice as long to complete as contracting it out.

Based on the paragraph quoted from Arbitrator Talarico's opinion beginning "The credible evidence," it is unclear to me whether the caster was not functioning while the repairs were being performed, or whether he was addressing the need to have available spares. The latter seems more likely based on the Union's "purely hypothetical" argument, his finding earlier in the decision that one strand had been down for five days, and the following statement in his opinion "On September 1, 2020, the Caster Maintenance Aisle management met with the Bargaining Unit Work Committee regarding the issues related to repairing the segments impacted by the breakouts and replenishing the spares inventory."

If Arbitrator Talarico was addressing potential losses from the lack of spare segments, the calculus is identical to the current case. But even if the prior case involved repairs to get the caster back into operation, the consideration is the same. Operating without a spare segment for a position for any time involved a risk of enormous losses. In minimizing that risk the Company had a bona fide business purpose and achieved a meaningful sustainable economic advantage.

The two events within a month described in Arbitrator Talarico's decision and the two events occurring exactly a month apart in early 2023 show that it would be foolhardy to assume that lightning could not strike twice. It behooves the Company to have two spare segments available for position 2 and position 3. Contracting out the repair to Segment 2-3-2 was the most expeditious way to accomplish this objective.

The Union complains, as it did in the prior case, that the Company failed to maintain an adequate inventory of spare segments. This contention was also resolved in the earlier case. In the prior case the Union argued that the Company could have replaced the segments with spares and faulted the Company for having insufficient spares. Arbitrator Talarico rejected this contention, stating "However, as noted above, the combined effect of the two August 2020 breakouts caused the inventory of spares to drop below sufficient levels, because those spares had to be used to fix the effects of the breakouts."

Finally, the Union argued that the Company could have arranged for the contractor to configure Segment 2-3-7 (which was contracted out with the Union's agreement) for position 3 rather than position 2, and that it could have revised its own in house schedule for repairing Segments 2-3-4 and 2-3-5. In retrospect, it is possible to identify different scenarios that the Company could have pursued. But this does not alter the conclusion that the course it actually did follow met the test that the performance of this work by a contractor was "for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage."

To the extent that the Union relies upon the United States Steel Corporation case cited above, I regard that case as inapposite since it involved a different exception under the Basic Labor Agreement.

For the reasons expressed above, I conclude that the Company did not violate the Basic Labor Agreement when it contracted out the repairs to Segment 2-3-2, and that the Union's requested make whole remedy should be denied.

Award

The Company shall cease and desist from failing to comply with the time requirements under Article Two Section F (7) of the Basic Labor Agreement.

In all other respects the claim for relief is denied.

Issued November 10, 2023

Matthew M Franckiewicz