

BEFORE
ARBITRATOR BARRY E. SIMON

In the Matter of the Arbitration Between

UNITED STEEL, PAPER AND FORESTRY,
RUBBER MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION
AND ITS LOCAL 1010,

Union,

and

CLEVELAND-CLIFFS STEEL LLC.

Employer.

Case 147

Indiana Harbor West
Grievance No. 26A-23-01

OPINION AND AWARD

The above identified matter was heard before the undersigned Arbitrator, a member of the parties' Board of Arbitration, on June 3, 2024 in the West Annex Main Office Building of the Indiana Harbor steel plant, East Chicago, Indiana. Representing Local 1010 of the United Steelworkers, hereinafter referred to as "the Union," was:

Jacob Cole
District 7 Staff Representative

Representing Cleveland-Cliffs Steel, hereinafter referred to as "the Company" or "the Employer," were:

Dino Spiridis, Lead Analyst - HR-LR
Jacob Daurer, Senior Labor Relations Analyst

Sworn testimony was given before the Arbitrator, and the parties were afforded a fair opportunity to present their evidence and arguments in this matter. At the conclusion of the parties' closing arguments, the Arbitrator declared the record before him to be closed.

Background: The Company owns and operates multiple steelmaking facilities, including the Indiana Harbor Works in East Chicago, Indiana. Production and maintenance employees at the facility referred to as Indiana Harbor West are represented by Local 1010 of the Union pursuant to a collective bargaining agreement effective September 1, 2022 through September 1, 2026, hereinafter referred to as the "Basic Labor Agreement" or "the Agreement."

The Grievants herein are employed in the Company's Rail Operations and are engaged in the movement of materials and product throughout the facility by rail. Rail Operations is covered by a Wage Incentive Plan particular to that Department. It is undisputed that a fire in Blast Furnace #7 on November 26, 2022 resulted in a halt in steelmaking. In computing Rail Operations employees' entitlement to incentive payments, the Company did not base its computations on six pay period averages for pay periods ending December 3 and December 17, 2022.

On January 12, 2023 the Union filed a grievance charging the Company with failing to apply the six pay period average provision for computing incentive payments. As a remedy, the Union asked that the Employer be ordered to make the affected employees whole and to cease and desist. The grievance was denied by the Company and was progressed through the grievance procedure in accordance with the provisions of the Basic Labor Agreement. The parties being unable to reach resolution, the matter was submitted to arbitration before the undersigned Arbitrator. The parties

have stipulated that the grievance is properly before the Arbitrator and that he has jurisdiction to render a final and binding Award.

Statement of Issue: The parties have agreed upon the following Statement of Issue:

Did the Company violate the Basic Labor Agreement when it did not apply the Rail Operations Wage Incentive Plan in pay periods ending December 3 and December 17, 2022? If so, what is the appropriate remedy?

Relevant Contract Language:

ARTICLE FIVE - WORKPLACE PROCEDURES

* * *

Section I. Adjustment of Grievances

* * *

6. Board of Arbitration

* * *

- b. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure as well as disputes concerning the Insurance Agreement. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement or the Insurance Agreement.

* * *

- d. The decision of an arbitrator shall be final and binding upon the Company, the Union and all Employees concerned.

* * *

WAGE INCENTIVE PLAN
RAIL OPERATIONS

* * *

Computation Procedure

Incentive performance per pay period shall be measured by the following items for which tables have been established:

1. Tons per Man Hour For The Pay Period
2. Total Derails For the Quarter
3. Total Derails For The Quarter For Each Individual Operator And Conductor

Group I Index of Pay Performance for the pay period shall be computed by ascertaining the points to be credited in the Tons per Man Hour Table, adding to that the Total Derails For The Quarter performance from the previous quarter then multiplying the sum by the individuals Quarterly Derail performance from the previous quarter, dividing by 100, adding 1.00 and expressing as a percent. The Index of Pay Performance for Groups II and III is the average Engine Operator/Conductor margin plus the applicable Occupational Distribution Additive, dividing by 100, adding 1.00 and expressing as a percent.

* * *

NOTES

* * *

4. In the event of a major Ironmaking or Steelmaking outage which causes a gross reduction in tons, the previous six pay period average shall be substituted for tons per man-hour purposes.

Position of the Union: The Union argues the fire at Blast Furnace #7 constituted a major outage, with iron production dropping by 54% during the period from November 26 through December 3, 2022. It says steel production also dropped by 83% from the previous pay period. Because of a "trickle down" effect, the Union says 80" production for the pay period ending December 17, 2022 was down 71%. As a result, the Union states the points under the Wage Incentive Plan for each of the two pay periods was 35, while the six pay period average was 46.2.

The effect on incentive payments for 75 employees in the department, according to the Union, was a loss of approximately \$48,000 over the four weeks.

By characterizing this event as a "major outage," the Union argues Note 4 of the Wage Incentive Plan governs by stating, "In the event of a major Ironmaking or Steelmaking outage which causes a gross reduction in tons, the previous six pay period average shall be substituted for tons per man-hour purposes." This protection, says the Union, ensures that employees are not financially disadvantaged during periods when performance metrics cannot be met.

The Union claims this group of employees was treated unfairly as compared to other employees. It notes the Company used the six pay period average when computing the incentive payments for employees on Blast Furnace #7, calling it a "planned outage." The fire, insists the Union, was not a planned event. The incentive plan for the rail employees, notes the Union, does not distinguish between planned and unplanned events. All that is required, according to the Union, is that the event caused a gross reduction of tonnage over the two pay periods. It believes the Rail Operations employees should be treated in the same manner as the employees on the Blast Furnace.

Concluding that the Employer violated the Basic Labor Agreement, the Union asks that the affected employees be made whole.

Position of the Employer: The Company denies the fire constituted a major outage. That term, according to the Company, is reserved for planned outages, *i.e.*, predetermined shutdowns of a production unit to perform necessary preventative and routing maintenance tasks and/or equipment upgrades. On the other hand, it says unplanned outages, such as fires, equipment breakdowns, or

significant furnace chills, reduce the ability to meet production targets and the opportunity afforded in the incentive plan. The Company explains that incentive payments at this facility do not begin at zero production; a certain minimum production level must be achieved prior to any payout. It describes incentive pay as additional compensation once certain production thresholds have been met, rather than a guarantee or entitlement.

The Company says it has more than sixty different incentive plans covering nearly 3,000 bargaining unit employees. These plans, says the Company, are rewards it shares with its employees when it is achieving higher productivity. It explains the incentive plans are opportunities for employees to earn compensation over and above their hourly base rate wages based upon their performance. For the employees in Rail Operations, it says incentives are primarily based upon tonnage transported between the various processing departments and the avoidance of derailments.

In this case, the Company claims it suffered economically during this period of zero production caused by an unplanned event. Nevertheless, it says the Union claims entitlement to incentive protection by characterizing four lost days of production as a major outage.

The Company denies that the Rail Operations Incentive Plan is comparable to the #7 Blast Furnace Plan or the #4 Steel Production Plan. Although they both contain provisions for six pay period averaging during planned outages, the Company says it was able to move up outages that had been planned for a later date during this unplanned downtime. It explains that the Rail Operations Plan does not contain a similar provision.

The Company argues there is no evidence of the six pay period averaging being applied during unplanned events for any of the incentive plans. Rather, it says it had been applied under the

Rail Operations Plan only during planned outages in ironmaking or steelmaking. The Company asserts it has applied the phrase "major Ironmaking or Steelmaking outage" consistently for more than twenty years without Union objection. The Company submits the Union has not met its burden of proof, and asks that the grievance be denied.

Discussion: There is no question that the November 26, 2022 fire in the #7 Blast Furnace resulted in a loss of production of iron and steel. This, in turn, adversely affected the productivity numbers used to compute incentive payments under the Rail Operations Wage Incentive Plan. The question before the Arbitrator is whether this event required the Employer to substitute the average of the six prior pay periods for tons per man-hour purposes. As noted above, the operative language in the Incentive Plan is:

In the event of a major Ironmaking or Steelmaking outage which causes a gross reduction in tons, the previous six pay period average shall be substituted for tons per man-hour purposes.

The answer to the question lies in the definition of "major Ironmaking or Steelmaking outage." As the Arbitrator reads the sentence, he does not understand the phrase "which causes a gross reduction in tons" to define what a major outage is. That is, every gross reduction in tons does not constitute a major outage. On the other hand, every major outage may not necessarily cause a gross reduction in tons. It is only when (1) there is a major outage and (2) that outage causes a gross reduction in tons, that the six pay period average provision applies.

The term "major . . . outage" is not defined anywhere in the BLA or the Rail Operations Wage Incentive Plan. Because the language is not clear and unambiguous, the Arbitrator must look

to how the parties have defined the term in the past. Past practice may be used as a tool of interpretation when three conditions are met. Arbitrator Richard Mittenthal, in a presentation to the National Academy of Arbitrators, described them as clarity and consistency, longevity and repetition, and acceptability.¹

The Company has presented documentation of four prior events that it asserts were unplanned. Between May 3 and May 31, 2013, the operation of the #7 Blast Furnace was slowed because of a severe chilled hearth followed by a catastrophic failure of the #26 blowpipe. The loss of production along with a slow recovery resulted in the loss of a minimum of 100,000 tons. The incentive payout during the three pay periods was 46.2%, as compared to the six pay period average of 68%.

A second event, a chill, occurred at the #7 Blast Furnace resulting in lost production for eight days between May 21 and May 30, 2014. During this pay period the incentive payout was 46.2%, while the six pay period average would have been 64.8%.

Between December 5 and December 11, 2021 six days of production at #4 Steel Production were lost due to a failed relief valve on the hood water surge tank causing the loss of furnace hood water, triggering the water systems at the steel shop to freeze up. The rail incentive payout was 46.2% compared to 46.2% for the six pay period average. Although the numbers were the same, the Employer characterizes this as a coincidence, and asserts the payout was based upon the actual production figures for the pay period.

¹Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, in *Arbitration and Public Policy*, Proceedings of the 14th Annual Meeting of NAA 30, 33 (Pollard ed., BNA Books 1961).

The fourth event at #4 Steel Production, a failed E-run and hot metal pouring onto the floor, destroying large portions of the electrical infrastructure, resulted in six days of lost production from April 4 to April 10, 2022. The rail incentive payment was 35% versus a six pay period average of 46.2%.

This is a sufficient number of identifiable events over a period of years to demonstrate clarity and longevity. There is no indication that the Union filed a grievance over any of the incentive payments connected to these unplanned events. This suggests acceptability of the Employer's method of computing incentive payments for such events. Furthermore, the Union has offered no instances where the six pay period average was utilized for reduced production due to an unplanned event. Based upon the record before him, then, the Arbitrator finds that the Union has failed to meet its burden of proof in showing that the term "major outage" applies to unplanned events such as the one in this case.

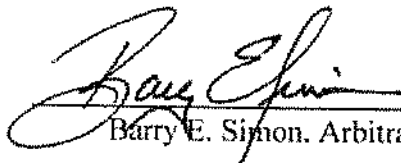
This finding is consistent with the Arbitrator's acceptance of the Employer's argument that the incentive payments do not constitute a wage guarantee. The concept of a wage incentive is to reward employees for increased productivity. In the plan herein, the incentive is largely measured by productivity. To a lesser extent, it is also measured by operational safety, *i.e.*, a minimization of derailments. The limitation of the application of the six pay period average computation to planned events is intended to ameliorate the effect of reduced productivity as a result of the Company's own actions.

During the second pay period covered by this grievance, December 4-17, 2022, the Employer chose to move up maintenance work on #7 Blast Furnace that had been planned for the future. As

a result, the Blast Furnace employees received payments under their Wage Incentive Plan computed by using the six week pay period average method. In effect, the Company converted an unplanned outage to a planned outage. If it became a planned outage for the Blast Furnace employees, it should fit the definition of a major outage for the Rail Operations employees, as well. Presumably, the average method would have been employed for computing the Rail Operations employees' incentive payments had the maintenance work been performed when it was originally scheduled.

The Company computed the Rail Operating incentive payments for the first pay period ending December 3, 2022, correctly, but should have used the six pay period average method for the second pay period ending December 17, 2022. The grievance is sustained to the extent that the Employer is directed to adjust the incentive pay for affected Rail Operations employees for the pay period using the six pay period average method.

Award: The grievance is sustained to the extent that the Employer violated the Basic Labor Agreement by not utilizing the six pay period average method for computing the wage incentive payments for Rail Operations employees for the pay period ending December 17, 2022. The Employer is directed to recompute the wage incentive payments and pay the affected employees in accordance with this Award. The Arbitrator will retain jurisdiction over this dispute for sixty days from the date of this Award solely to resolve any issues related to the remedy awarded herein.


Barry E. Simon, Arbitrator

Dated: July 2, 2024
Arlington Heights, Illinois