

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL STEEL COMPANY  
MINORCA MINE

And

Award No. 20

UNITED STEELWORKERS, USW  
LOCAL UNION 6115

OPINION AND AWARD

Introduction

This case from Minorca Mine concerns the Union's claim that the Company improperly assigned the work of hauling tails to production truck drivers instead of tails truck drivers. The case was tried in Duluth, Minnesota on December 11, 2007. John Rebrovich represented the Union and Patrick Parker presented the Company's case. The parties submitted the case on final argument.

Background

Only about a third or less of mined material can be converted into pellets. The rest is called tailings, and they are hauled from the plant by large trucks. Traditionally, this work has been performed by an employee known as a tails truck driver, which was included in the plant line of progression (LOP). The majority of the truck drivers employed by the mine are part of the pit LOP and their principal function is to haul the mined material to the plant, where it can be converted into pellets. The issue in this case concerns the Company's decision to assign

production truck drivers from the pit to haul tailings, while the tails truck drivers sit in a pickup truck near the dump and open the door for the trucks.

The Company stresses that it uses this procedure only when it does not have sufficient trucks to haul iron ore. It owns 13 trucks, several of which are over the projected 12 year life of a truck. It sometimes has trouble, it says, putting enough trucks on the road for a shift. When it has 9 trucks, it assigns one to the tails truck driver; when it has 8 trucks, it assigns all of them to production truck drivers and has the tails truck drivers man the pickup truck. Although there was evidence that tails truck drivers had been in the pickup truck on a 24/7 basis for the three weeks before the hearing, Company witnesses said that usually happened 60% to 70% of the time. The Company says it is “ludicrous” to assign the tails truck driver to the pickup truck, and that it will do so only until it can build up a fleet of trucks that will allow every driver to be assigned every day.

The collective bargaining agreement covering most ArcelorMittal employees was extended to former Ispat Inland facilities – including Minorca Mine – in November 2005. In 1993 the Minorca parties had negotiated a Mega Maintenance and Operations Improvement Agreement at the mine which, among other things, addressed the use of mobile equipment operators:

Minorca mobile equipment operators will have no area boundaries on assignments or needs expected to last four (4) hours or less. In these instances if an operator and the equipment is needed, the work will be performed by any available qualified operator regardless of their scheduled area. This flexibility will help Minorca meet its operating needs, allowing Minorca the ability to meet changing operating conditions.

The last page of the document gives several examples of what the parties called “Area Overlap.” Two of them are, “Pit haul truck operators hauling tails from the load out” and “Tails truck driver hauling ore in the pit.”

Marty Henry was President of the Local Union during negotiations for the 2005 Agreement. He said prior to 2005, if the mine was short a truck, a pit driver was demoted and the tails truck driver was assigned to a truck. The Company said it wanted more flexibility and the Union agreed that the tails truck driver could haul ore, but it said the pit drivers could haul tailings only as long as they stayed within the four hour time limitation from the Mega Maintenance Agreement, quoted above. The Union interprets this to mean four hours in a 24 hour period, not four hours per turn. During the negotiations, the Company proposed increasing the four hour limit to eight hours, but the parties were not able to agree to that. They did, however, agree to put the tails truck driver in the maintenance LOP. The Union said it did this because there had been discussion of pumping out tails instead of hauling them. The Union was concerned that the Company would eliminate the job and the Union wanted to put the employees in the maintenance LOP to protect them. The Company ultimately decided not to pump the tailings.

Another Union witness, David Zasadni, testified that the Union had filed grievances because the Company had exceeded the four hour limitations in a 24 hour period, and the Company had paid the employees affected. He also identified bargaining notes indicating that the parties had discussed the issue of pit and plant flexibility during the 2005 negotiations. The Company had wanted dotted lines from one LOP to another so that employees could be assigned easily to work in another LOP, but the Union would not agree. Zasadni testified that the Union wanted clarification from the Company about what it would do. The Union did not object to assignments on a shift-by-shift or day-by-day basis, he said, but it was concerned about longer term assignments, like the ones at issue here. On cross examination, Zasadni said he did not have examples of grievances that had been granted.

Jonathan Holmes, Vice President of Operations for the Mine, testified that the Company has 13 trucks, four of which are used primarily in stripping operations. The Company typically schedules 8 trucks in the pit, with 2 on stripping and 6 on ore. In addition, it assigns a truck to the tails truck driver. However, if it has only 8 trucks, it does not give one to the tails truck driver but, instead, puts him in the pickup truck. This is prompted by efficiency concerns, Holmes said. The mine is behind on production, and it needs all of the ore it can get to the crusher. The pit drivers' schedule also increases efficiency, Holmes said, because they do hot relief, which means the relief employee is driven to the truck. The tails truck drivers drive to a relief point, which means they may have to stop working early if they do not have time to complete another run before the shift ends, thus resulting in "dead time." In addition, Holmes said the Company has understood the four hour limit in the Mega Maintenance Agreement to mean four hours per shift. Otherwise, he said, it would be impossible to monitor the amount of time available from one shift to the next. A Union witness, however, said there had been no problem keeping track of time.

The Company relies on a letter agreement between John Rebrovich, Union Staff Representative, and Holmes, reprinted in the November 2005 Agreement. In relevant part the letter reads as follows:

This will confirm certain understandings that the parties reached during the 2005 negotiations:

...

This will confirm our understanding that in order to attain maximum productivity and flexibility at the Mine, incumbents of pit and plant operations jobs, and maintenance mobile equipment operator jobs may be assigned to perform tasks and operational needs associated with other operations and maintenance jobs and areas. However, employees will not establish any seniority rights by reason of such assignments.

This means exactly what it says, Holmes testified. The Company views it as an extension of the Mega Maintenance Agreement provision quoted above, which allows the Company to move drivers from one LOP to another.

The Company agrees that during negotiations, the parties discussed dotted lines and increasing the four hour time limit in the Mega Maintenance Agreement. However, it says there was no agreement on those issues which, according to the Union's exhibits, had been discussed in February 2005. The parties did not finish contract negotiations until November 2005. The Company's position, then, is that the early negotiations ultimately evolved to the flexibility language in the letter agreement. The language supplanted the four hour limitation in the Mega Maintenance Agreement, the Company argues. The Company also points to Mittal Award No. 8 out of the Indiana Harbor Works, which involved a local working condition that prevented the Company from assigning employees across LOP lines to operate a locomotive. There, as here, the Company argued that it had the right to assign employees from one LOP to another. Although I rejected that broad claim in Mittal Award No. 8, the Company says this case is different because of the flexibility language quoted above from the letter agreement that covered the mine, but not the Indiana Harbor Works.

The Union says that previously, when the Company was short on trucks, the tails truck driver was assigned to one and a production truck driver was reduced. Nothing has changed since then, the Union argues. It notes that in negotiations, the Company tried to get more flexibility than the Mega Maintenance Agreement provided, first by proposing dotted lines between the LOPs and then by trying to increase the four hour limitation to eight hours. The Union rejected both measures. The Union also believed that putting the tails truck driver in the maintenance LOP gave the Company the flexibility it sought. The Union says no one from the

Company approached it about using hot relief for tails truck drivers. The Union agrees that the Company now has more flexibility in assignment than it had before 2005. But, it says, the flexibility has to comply with certain limitations in the Agreement, including the four hour limit in the Mega Maintenance Agreement.

### Findings and Discussion

The flexibility language in the Rebrovich-Holmes letter does not appear to be restricted to truck drivers. It speaks broadly of “pit and plant operations jobs, and maintenance mobile equipment operator jobs.” There was no evidence the Company had relied on this language in other areas of the operation or, if so, what limitations, if any, applied. The obvious difficulty in this case is to reconcile the broad language of the letter with the restrictions found in the Mega Maintenance Agreement. In effect, the Company argues that the letter agreement replaces the four-hour limitation for truck drivers in the Mega Maintenance Agreement. It is true, as the Company argues, that the negotiations about the Mega Maintenance Agreement occurred several months before the parties reached the November 13, 2005 Agreement. But that of itself does not mean the parties intended the contract language to supplant a previous agreement. It is one thing to say that a contract proposal did not survive the negotiations leading to the agreement; but that does not mean a pre-existing agreement also disappeared, especially when the parties were silent about its status.

The Rebrovich-Holmes letter makes no reference to the Mega Maintenance Agreement, even though the Mega Maintenance Agreement makes explicit reference to the kind of flexibility the side letter was intended to secure. Had the parties intended to override the limitation of the Mega Maintenance Agreement, it seems reasonable that there would have been some reference

to it in the letter or, at least, some express recognition about it during negotiations. And this is especially true given the Union's rejection of the Company's other attempts to create dotted lines between LOPs and expand on the four hour limitation. There was also no evidence that the Union had traded away the four hour limit for some other benefit.

In short, I am not persuaded that the parties intended the side letter to nullify the effect of the Area Overlap for Mobil Equipment Operators language found in the Mega Maintenance Agreement. Instead, I understand that language to impose a limit on the extent to which the Company can use truck drivers under the flexibility language of the Rebrovich-Holmes letter. This interpretation gives effect to both agreements. I understand that the letter uses the words "maximum ... productivity and flexibility." However, as noted above, the letter may apply to other kinds of work that is not subject to the Mega Maintenance Agreement. A limitation on the use of truck drivers, then, would not undermine the use of the word "maximum."

The parties disagree about the scope of the four-hour limitation in the Mega Maintenance Agreement. The Union contends it means four hours in a 24 hour period, and the Company says it means four hours per shift. The Union says the Company has paid grievances when the time worked exceeded four hours per 24. It did not submit any documentation supporting this claim, although it is fair to observe that the Company objected to any evidence concerning grievance settlements. In addition, the Company did not submit schedules or other documents indicating that it had assigned drivers to work across boundaries for more than four hours in a 24 hour period. There is, then, no documentation or proven consistent practice to assist my interpretation of the language.

The language of the letter mentions neither shift nor calendar day. Most important, however, is the first sentence. It says "Operators will have no area boundaries on assignments or

needs expected to last four hours or less.” The word “assignment” is key; when read with the second sentence, the language says an operator cannot be assigned outside his normal boundaries for more than four hours. I understand the word “assignment” to relate to work “an operator” performs during his shift, not to work that extends across shifts. Equally important is the word “expected.” I understand this to mean that the across-boundaries language applies when the Company believes the assignment or the need for the work will take four hours or less.

I find, then, that if the Company expects the work ordinarily performed by the tails truck driver will take more than four hours during a given shift, it cannot be assigned to a production truck driver.<sup>1</sup>

#### AWARD

The grievance is resolved as explained in the Findings.

---

Terry A. Bethel  
February 28, 2008

---

<sup>1</sup> I understand the Company’s claim that it is more efficient to assign the work to the production truck driver. I have no reason to question that conclusion. But my responsibility is to enforce the language the parties agreed to, which may not always result in the most efficient method of operation.