IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. 47
Core/Non-Core Work

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 6787, USW

OPINION AND AWARD

Introduction

This case from the Burns Harbor Plant concerns the Union's claim that the Company failed to give notice as required before contracting out repairs to a portion of the track used by the hot metal ladle transfer cars that transport hot metal between the BOF and the caster. The case was tried in Chesterton, Indiana on November 17, 2011. Robert Casey represented the Company and Rick Bucher presented the Union's case. There were no procedural arbitrability issues. The issue on the merits will be discussed below. The parties submitted the case on final argument.

Background

The Union invoked the expedited arbitration provisions of the Agreement because the Company did not give notice of its intent to contract out the repair of the hot metal ladle transfer car rails. Although the ultimate issue in the case is whether the Company violated Article 2-F-5-a by failing to give notice of its intent to contract out the work, resolution of that issue depends

on whether the work is classified as core or non-core. The distinction between core and non-core was introduced in the December 15, 2002 Agreement between GST and the USWA.[1] That language said: "The Company may contract out non-core functions, including janitorial, mail activities, landscaping, snow removal, garbage and trash removal, track repair and general plant housekeeping." The language was unchanged in the November 13, 2005 Agreement between the Union and what was then Mittal Steel USA. The language was changed in the September 1, 2008 Agreement between ArcelorMittal USA and the Union. The agreement is found in Appendix B in one of several letters between Dennis Arouca, Company Vice-President of Labor Relations, and David McCall, the Union's District 1 Director. The pertinent language reads as follows

> Not withstanding any local understandings to the contrary, the company may contract out non-core functions limited to, janitorial, mail activities, landscaping, snow removal, garbage and trash removal [,] track repair and general plant housekeeping which is not associated with general labor work on a production facility.

The principal change was to delete the word "including" and limit the concept of non-core work to the listed activities. There was no change in the language at issue in this case, i.e., the term "track repair."

The work at issue involved replacement of a 39 foot section of track running between the BOF and the caster. There are 103 feet of outside track between the two facilities, and the track continues inside both buildings. Unlike railroad track, which has a gauge (distance between rails) of 56 and ½ inches, the gauge for the transfer car track is 22 feet. In addition, because of the heavier load on the transfer car rails, the track weighs 175 pounds per yard, as opposed to 115 pounds per yard for rails used by trains. Unlike train rails, which rest on ties, the transfer car

[1] The Burns Harbor facility did not fall under the 2002 Agreement until June 16, 2003.

track is on a steel plate base that is set in concrete 8 and ½ inches thick. The transfer cars have steel wheels that, to a layman, appear similar to wheels on rail cars, although larger.

Michael Mahaffey, Manager of Maintenance Administration, testified that the Company uses contractors to repair the outside ladle transfer car tracks dozens of times a year, and has never given notice. Bargaining unit employees have never done the work, he said. Mahaffey said during the period when Bethlehem operated the facility, there was a departmental agreement that contractors would repair the rails outside the caster and the BOF, and that bargaining unit employees would repair the track inside those buildings. On cross examination, Mahaffey said there was no written agreement about who repaired the rails. He also agreed that moving hot metal from the BOF to the caster supported the production process. But he pointed out that sub cars are used to transport hot metal from the blast furnace to the BOF, which also supports the production process. Those cars, however, move over ordinary railroad tracks, which are unquestionably considered to be non-core work under the language quoted above.

Maintenance Manager Mark Emaus echoed Mahaffey's testimony about an agreement that bargaining unit employees would replace hot metal ladle transfer car track inside the buildings and that the Company could use contractors for outside track repairs. Emaus said this understanding had been in effect since the late 1990's, and that during discussion about inside versus outside track, the Union had not pressed for bargaining unit employees to repair the outside track. Rather, the Union wanted bargaining unit employees to repair track inside the BOF and the caster. Emaus said the Company had never given notice for an outside track repair; however, notice was given on occasions when the Company planned to use contractors to repair track inside the buildings. The understanding, he said, was with an assistant griever, and not a member of the contracting out committee.

Gene Samplawski, Union Chairman of the Contracting Out Committee, said beginning with ISG, the parties had understood the "track repair" language in the Agreement to apply to railroad track, and not the ladle transfer car track. Samplawski identified previous contacting out notices covering the same tracks at issue here. At least one and possibly two of the jobs involved repairing outside tracks. However, Samplawski pointed out that the Company did not claim the track repair was non-core; rather, the notices relied on the surge maintenance exception as justification for contracting out the work. Samplawski said the Union's exhibits were just a sampling, and that it could have produced more notices to the same effect. Samplawski said he was the Union Contracting Out Chairman when ISG bought the Company, and that he and two Company members of the contracting out committee agreed that the non-core language in the BLA applied only to train tracks. Samplawski said he believed that agreement was still in effect. Neither of the Company representatives is still employed at Burns Harbor.

Dave McCall, the Union's District 1 Director, was the Union's chief negotiator in the 2002 ISG agreement that first addressed track repair as non-core work, and for the 2008 Agreement that modified the language. McCall said the track repair language grew out of the Company's concern over a large number of railroad derailments and its belief that the track repair gang could not handle the repair work. The Union, too, was concerned about track maintenance, McCall said. But he testified that the discussion had always been about railroad track repair, and that the words "track repair" were not intended to encompass other kinds of track.

On rebuttal, Gerald Tucker of Steelmaking Maintenance said there is no difference between inside and outside rails the ladle transfer car area. Nor, he said, does a 39 foot section of track end at the BOF or caster doorways. He said rails that are broken on the outside are

repaired by contractors even if the rail extends inside the building. Similarly, the bargaining unit repairs rails broken inside. Tucker reviewed the Union's exhibits in which the Company sought to contract out ladle transfer car rail repairs by using the surge maintenance exception. The notices made it difficult to tell where the break was in the rail, but the fact that notice was given, he said, suggested it was inside. Those notices were necessary, he said, because the Company wanted to contract out work the bargaining unit would normally do.

Positions of the Parties

The Company says it is not claiming there is an agreement to contract out the outside track repair work in the ladle transfer area. The parties simply worked out a solution to a dispute, as the paucity of core vs. non-core cases seems to indicate they have typically done in such cases. The Company also agrees that the bargaining unit is capable of doing the work; in fact, they repair the same tracks inside. The Company cites Mittal Decision No. 10[2], which concerned whether sweeping the roads inside the plant qualified as non-core because it was plant housekeeping. That case separated core and non-core work by considering whether the item of work was an important activity in the steelmaking process. The track repair at issue here, the Company argues, is not integral to the production of steel. The BOF creates a product which is then transferred to the caster for additional processing. Both the BOF and the caster are integral parts of the steelmaking process. In contrast, the hot metal ladle transfer cars simply move products from one place to another. It is no different, the Company argues, than carrying large pots of soup. The transportation function does not add value to the steel and is not a factor of production. The argument that the tracks are an essential part of the process could be made

[2] There was some confusion when Mittal and ArcelorMittal case numbers were introduced. Thus, some copies of ArcelorMittal 10 are mistakenly numbered ArcelorMittal No. 7.

about any step in the procedure, the Company says; everything the Company does supports production.

My responsibility in this case, the Company says, does not involve determining whether work not named in the contract is non-core; rather, I must determine whether the term "track repair" includes repair of the tracks at issue in this case. There is no evidence, the Company says, that the term "track repair" was intended to exclude this work, even if the parties were thinking about railroad track when they negotiated the language. McCall said other kinds of rails were not discussed, including in the 2008 negotiations, which was the first time ArcelorMittal representatives were at the table. The Company says the parties have to live with the language they negotiated and the term "track repair" is broad enough to embrace the tracks at issue. Any other interpretation would in effect add the word "railroad" to the non-core agreement, which I am forbidden from doing. The Company also points out that other provisions of the contract talk specifically about railroads, meaning that the parties know how to use that term when they want it to apply. The Company tendered exhibits that define the word "track." In general, they speak about a set of parallel rails, which the Company says describes the tracks at issue in this case.

The Union says this is a straightforward case. The contract requires the Company to notify the Union before it contracts out work and it failed to do so here. The only exception to a failure to notify, the Union argues, is if the work is non-core, as specified in the September 1, 2003 letter between Arouca and McCall. But the exception does not apply here, the Union says, because the parties intended to limit the use of the term "track repair" to railroad track. Accepting the Company's argument, the Union says, could even embrace crane rails as non-core work. The Union also says the track at issue contributes directly to the steel-making process because the cars haul hot metal. The Union also relies on the Company's decision to give notice

before contracting out work on the tracks, even when some of the work was outside. This undercuts the Company's claim that no notice was required because the work was non-core. The Union also says the sub car analogy – that sub cars haul hot metal just as the transfer cars do – is inapt because the sub cars run on railroad tracks, and everyone agrees that the repair of railroad tracks is non-core work.

Findings and Discussion

ArcelorMittal No. 10 was decided when the list of non-core work included specific functions (e.g., snow and garbage removal), but did not foreclose adding other items of work to the list. The language said the Company could contract out non-core work "including" the listed items. In those circumstances, it may have been reasonable to parse the meaning of "core" work in order to categorize certain functions, or to understand the reach of general categories of work agreed to be non-core (e.g., general plant housekeeping). The distinction between core and non-core, then, informed the finding that sweeping the roadways was non-core work. Unlike core work, sweeping the roadways was not one of the "basic and most important functions" in steelmaking.

But that kind of analysis is inapt in the instant case. The list of work functions classified as non-core is no longer illustrative; non-core work is limited to the work listed in the agreement, which includes track repair. Thus, while reasonable people might disagree about the importance of certain tracks (e.g., tracks that go to the dump versus tracks that go to the BOF), that issue is no longer part of the analysis. If an item of work qualifies as "track repair," then it is non-core work without regard to its importance to the steelmaking process. The question, then, is simply whether the work at issue is track repair.

The parties did not define "track repair," even though both sides certainly understood there was more than one kind of track in the plant, and that repairing the ladle transfer car track had some similarity to repairing railroad track. In such circumstances, the typical inference is that the parties would have specified the kind of track covered in the list of non-core work, had they intended to limit the reach of the language. I believed McCall's testimony that the parties' discussions in negotiations focused on railroad track and that other kinds of track repair were not discussed or considered. But the fact that the discussions centered on railroad track does not mean the same concerns might not have applied to other kinds of track. In any event, ultimately the parties have to live with the language they agreed to, especially when the 2008 Agreement foreclosed consideration of such factors as the importance of track repair to the steelmaking process. In that regard it is worth noting that in 2008 the parties expressly narrowed (or at least clarified) the kind of activities that could qualify as general plant housekeeping. There was, however, no such limitation placed on the meaning of "track repair."[3] I need not decide whether, as the Union contends, the Company's argument could even encompass crane rail. The only effect of this decision is that the words "track repair" do not differentiate between railroad track and the track used by ladle transfer cars. I find that the work at issue was non-core work that the Company was free to contract out without the notice required by Article 2-F-5-a.[4]

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[3] Both sides referred to local agreements or understandings about the meaning of track repair. The Company said there was an agreement that outside track repair in the ladle transfer car area could be contracted out, and the Union said the parties had agreed that track repair was limited to railroad track. The Company said it did consider the oral agreement about outside work to be binding in the instant case. A Union witness said he believed the agreement limiting track repair to railroad track was still in effect. But the Contract says expressly that previous agreements or understandings permitting the use of contractors to do bargaining unit work were null and void, and that any such agreement entered into during the term of the BLA had to be in writing and signed by the appropriate officials. There is no such agreement in this case. Moreover, the language at issue allows the Company to contract out non-core work "not withstanding any local understanding to the contrary."

AWARD

The work at issue is non-core work for which no contracting out notice is required.

s/Terry A. Bethel
Terry A. Bethel
January 15, 2012

[4] This decision that the work at issue is non-core does not foreclose continuing to assign bargaining unit employees to repair track inside the BOF and the caster. The Company is not required to contract out non-core work.