

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration	)	Arbitrator's Opinion
between	)	and Award
	)	
ARCELORMITTAL USA	)	Grievance 09-22
	)	
and	)	Award Issued:
	)	December 30, 2011
	)	Case 49
UNITED STEELWORKERS	)	
LOCAL UNION 9462	)	

Subject: Alternative Work Schedule

Appearances of Representatives:

Barry Simon, Esquire  
On behalf of the Company

Lew Dopson, Sub-District Director  
On behalf of the Union

This grievance, on behalf of the MTM Repair Crew at the Conshohocken Plant, protests that the Company failed to implement an Alternative Work Schedule approved by the affected employees. A violation of Article 5-C-6 of the September 1, 2008 Agreement is alleged.

Article 5-C-6 of the Agreement provides:

ARTICLE FIVE – WORKPLACE PROCEDURES

\* \* \*

Section C. Hours of Work

\* \* \*

6. Alternative Work Schedule

The Company may adopt alternative work schedules consisting of ten (10) or twelve (12) hour per day scheduling with the approval of the Local Union President/Unit Chair and the Grievance Chair and sixty percent (60%) of the Employees who are impacted by the alternative schedule.

Alternative work schedules may be revoked by a simple majority vote of the Employees who are impacted by that schedule or by the Company for legitimate business reasons. Following such revocation, the Company shall immediately reinstate a normal schedule in accordance with this Section.

In this case, the Company revoked an Alternative Work Schedule for the MTM Repair Crew on January 11, 2009. No grievance was filed at that time. Subsequently, on August 11, 2009, the MTM Repair Crew voted for an Alternative Work Schedule of four 10-hour days per week. The Company refused to implement that Alternative Work Schedule. This grievance was then filed on August 13, 2009.

The Union contends the Company did not have legitimate business reasons for revoking the MTM Repair Crew's Alternative Work Schedule. The Union asserts that it cooperated in cost containment efforts to maintain the viability of the plant; it stresses that the parties had on-going discussions over Alternative Work Schedules and layoff minimization plans and reached mutual agreement on a number of measures including voluntary layoffs and short work weeks and a reduction in contractors and minimizing overtime and Sunday and Holiday work. Nonetheless, the

Union insists that, prior to the filing of this grievance, the Company offered only subjective statements about its economic problems and did not produce affirmative evidence that it truly had legitimate business reasons for eliminating this Alternative Work Schedule. And it questions whether the revocation of this Alternative Work Schedule reduced costs to any significant degree.

The Company initially objects that, to the extent this August 2009 grievance protests the January 2009 revocation of the MTM Repair Crew's Alternative Work Schedule, this grievance is clearly untimely under Article 5-I-3 of the Agreement. It maintains this grievance should be dismissed on that basis. Regardless, the Company insists that its action in revoking this Alternative Work Schedule in January 2009 was supported by legitimate business reasons related to the deteriorating state of the economy and a fall-off in business and the consequent need to reduce operating costs. Maintenance budget levels were reduced to correspond with lower production levels, and it was said that the elimination of this Alternative Work Schedule reduced the costs of providing needed maintenance coverage. The Company also maintains that to the extent this grievance protests its refusal to implement the Alternative Work Schedule which the MTM Work Crew voted on and proposed in August 2009, this grievance must be denied because nothing in Article 5-C-6 of the Agreement requires the Company to implement any Alternative Work Schedule.

The Union offered the Chairman of the Grievance Committee as a witness in its case, and the Company offered the Division Manager of Maintenance and Manufacturing Services and the Manager of Human Resources/Labor Relations as witnesses in its case. The Union witness acknowledged having been informed by the Division Manager of Maintenance and Manufacturing Services in December 2008 that the 2009 Maintenance budget had been slashed from \$36,000,000 to \$12,000,000 and that Alternative Work Schedules would have to be eliminated. The Union witness reviewed the numerous ways in which the Union had responded and supported and/or offered to support reductions in costs needed to maintain the viability of the plant, including offering its own Layoff Minimization Plan. The Company witnesses agreed the Union had supported many cost-reducing and cost containment measures to assist in maintaining the viability of the plant in and after December 2008. The witnesses stressed, though, that all parties involved were aware as of December 30, 2008 of the deteriorating economic climate and the Company's intent to eliminate all Alternative Work Schedules. It was estimated that returning to four 10-hour shifts from five 8-hour shifts would add no less than about \$250,000 to labor costs, and it was conceded this cost, in dollarized form, had not been communicated to the Union prior to the filing of this grievance. It was noted, too, that the parties continued their attempts to devise a suitable and acceptable substitute Alternative Work Schedule after the filing of this grievance.

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The MTM Repair Crew grievance, filed on August 13, 2009, cannot be sustained to the extent it protests the Company's January 11, 2009 revocation of their Alternative Work Schedule then in effect and seeks to require the Company to now establish it possessed legitimate business reasons for this revocation. While Article 5-C-6 of the Agreement specifies that the Company may

revoke an Alternative Work Schedule "for legitimate business reasons", this grievance was filed more than seven months after this revocation and is thus clearly untimely under Article 5-I-3 of the Agreement which requires a grievance form to be completed and submitted "within thirty (30) days of the date on which the Employee first knew or should have known of the facts which gave rise to the grievance." Moreover, even if this grievance was not found to be untimely, the Company's evidence at arbitration, including the testimony that its revocation of this Alternative Work Schedule in January 2009 was in response to the deteriorating business and economic climates and the need to reduce costs such as those associated with this Alternative Work Schedule in order to maintain the viability of the plant, would be considered to have satisfied the contractual standard of "legitimate business reasons."

With regard to the MTM Repair Crew having voted on a four 10-hour days per week Alternative Work Schedule on August 11, 2009 and the Company having refused to implement this schedule, no violation of Article 5-C-6 of the Agreement is found to have occurred. Article 5-C-6 authorizes the Company to adopt certain Alternative Work Schedules with the approval of the Local Union President/Unit Chair and the Grievance Chair and sixty percent (60%) of the Employees who are impacted by the alternative schedule, but Article 5-C-6 does not compel the Company to adopt an Alternative Work Schedule. The fact that the MTM Repair Crew voted to approve the alternative schedule it was proposing here did not obligate the Company, contractually, to have adopted it.

In the absence of any proven violation of the Agreement, this grievance will be denied.

AWARD

The grievance is denied.



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David A. Petersen, Arbitrator