IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. 53
PEP Eligibility

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 979, USW

OPINION AND AWARD

Introduction

This case from the Cleveland Plant concerns the Union's claim that the Company violated the Pension Enhancement Payment (PEP) agreement negotiated as part of the 2008 Basic Labor Agreement when it refused to provide a PEP to Grievant Frank Stanek. The case was tried in Independence, Ohio on February 13, 2012. Thomas Barnard represented the Company and Tom Zidek presented the Union's case. Grievant did not attend the hearing, although the Union said it would proceed with the case, which principally concerns contract interpretation. There is no significant factual dispute. There were no procedural arbitrability issues. The issue on the merits will be discussed below. The parties submitted the case on final argument.

Background

On August 30, 2008, the parties signed a Term Sheet covering various issues they had agreed to, including a Pension Enhancement Payment. The PEP was memorialized in a letter

dated September 1, 2008, which was the effective date of the parties 2008 Basic Labor Agreement. The letter was signed by Company Vice President for Labor Relations Dennis Arouca and David McCall, USW District 1 Director. It reads, in full:

> Effective January 1, 2009, the Company will provide a one-time $10,000 cash payment to Employees following retirement if:
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> A. they are participants in the Steelworker Pension Trust or the Weirton 401K,
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> B. they are at least 56 as of September 1, 2008,
>
> C. they retire after attaining age 60, and
>
> D. they retire on or after January 1, 2009 and before the end of the term of the 2008 Basic Agreement
>
> The payment will be made no later than the end of the month following the month in which they retire. Such payments will not be considered covered compensation for any other benefit purpose and will be subject to employment taxes.

Grievant began working for the Company on September 24, 2007, and he voluntarily terminated his employment on April 1, 2011. The nature of Grievant's separation is the principal issue in the case.

The Union argues that Grievant satisfied all of the requirements of the PEP letter.[1] The Summary Plan Description for the Steelworkers Pension Trust defines a participant as "an employee who at one time or other was covered under the Plan, meaning that the employee's employer was paying contributions to the Trust on behalf of that employee." Grievant was employed by the Company, the Union points out, and the Company was making payments to the Trust on his behalf. Grievant was at least 56 as of September 1, 2008, he retired after reaching age 60, and he retired after January 1, 2009 and before the September 1, 2012 termination date of

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[1] Grievant did not work for Weirton and, therefore, was not a participant in the Weirton 401K.

the 2008 Basic Labor Agreement. Having met all of the requirements, the Union contends there is no question that Grievant qualifies for a PEP.

The Company does not deny that Grievant meets the SPT definition of "Participant," or that he satisfied the age and time requirements set forth in the PEP letter. But that does not mean he qualifies for a PEP, the Company says. The Company points to language in the PEP letter that says employees will receive a cash payment "following retirement," that they "retire" after reaching age 60, and that they "retire" within the proper time frame. Grievant cannot meet any of those criteria, the Company says, because he did not retire. There is no question that Grievant did not receive and was not eligible to receive a pension from the Company or the Steelworkers Pension Trust. But the Union argues that employees can retire even if they do not receive a pension and even if they have no vested pension benefits. The Union relies, in part, on a form Grievant filled out on April 1, 2011, his last day of employment. In response to the question, "Why are you leaving ArcelorMittal Cleveland?" Grievant wrote "retirement." Also, within a box headed "Retirement (if eligible)" Grievant checked "Early Retirement." The Union points out that this form was signed by Grievant and by John Morgan, the Company's Human Resources Representative for Payroll and Benefits.

Morgan testified that he signed the form, but that Grievant had not followed Morgan's instructions when filling it out. The Company submitted the original form, which showed that Morgan had highlighted in yellow the areas Grievant was to complete. In response to the question about why he was leaving, Morgan indicated that Grievant should check the box marked "Voluntary Quit." But Grievant checked "Early Retirement," and also wrote the word "retirement" on the form. During the same meeting, Morgan gave Grievant a letter concerning benefits he might be eligible for after he left the Company. The letter said Grievant's life

insurance would terminate at the end of the month, but that, "If eligible for retirement your retiree life insurance becomes effective the month following your retirement." Similarly, the letter said Grievant's medical insurance would terminate, unless he was eligible for retiree coverage. Morgan said Grievant does not receive retiree life insurance or retiree medical coverage. Nor is he eligible for a pension.

Morgan also identified a document called Program of Insurance Benefits (PIB) "For Eligible Retirees." That document defines a "retiree" as someone who has worked for the Company (or a predecessor) for 15 years; has received a pension, including a disability pension from SPT; or has met certain requirements after working for ArcelorMittal Weirton. Grievant did not satisfy any of these requirements, Morgan said, and was not eligible for any of the benefits covered by the PIB. The PIB does not govern pension benefits, but the Company says the way the parties have used the term "retiree" are relevant in determining what "retire" means in the PEP letter. Morgan also discussed the Summary Plan Description for the Steelworkers Pension Trust. As noted above, Grievant meets the Plan's definition of a "Participant"; however, Morgan focused on the word "retiree," which is defined as "A Participant who has retired and is receiving pension benefits from the Trust." Thus, even though Grievant was a participant, he is not a "retiree" because he has not received – and is not eligible to receive – any pension benefits from the trust.

The Union says nothing in the PEP letter says an employee must retire and receive pension benefits – or even be eligible for benefits – from the SPT in order to qualify for a PEP. Morgan acknowledged, the Union points out, that the PEP is not part of the Steelworkers Pension Trust. The Union argues that Grievant did not have to retire under the terms of the SPT to be retired; he was free to retire whenever he chose. On cross examination, Local 979

Grievance Chairman Russell Sheffler said Grievant's length of service was not a factor. He would have satisfied the criteria in the PEP letter even if he worked for the Company for only a year or less, providing he retired and did not quit to take another job. Sheffler said an employee can retire for any reason as long as he does not work anymore. The Union also points to ArcelorMittal Case No. 42, which it says supports its interpretation.

The Company stresses language in the PEP letter that says the pension enhancement is available "following retirement" and to employees who "retire" at the appropriate age and time. But Grievant did not retire; he simply quit his job and is now trying to turn that decision into a retirement so he can collect a $10,000 payment. Grievant could not turn a resignation into a retirement, the Company says, merely by writing the word "retirement" on a Company form.

Findings and Discussion

It is undoubtedly true that employees sometimes quit working and announce they have "retired," even though they are not eligible for a pension or other benefits typically given to retirees. And that action might satisfy a dictionary definition of the word "retire." But definitions in real cases must take account of the circumstances in which the word is used, especially when failing to do so would produce an unreasonable result, as it would in this case. It is unreasonable to believe that these parties would have agreed that eligibility for a $10,000 payment would turn on how an employee characterized his decision to quit working. Nor is it reasonable to believe they agreed that short term employees – even shorter than Grievant's three-and-a-half years – would qualify for such a windfall. The evidence establishes that the parties have understood retirement to mean that an employee is eligible for a pension from the SPT, or other benefits commonly made available to retirees, like a disability pension. The PIB says a

"retiree" is an employee who has at least 15 years of service and receives a pension from the SPT. And the SPT document identifies a retiree as, "A Participant who has retired and is receiving pension benefits from the Trust." Grievant may be a "participant" in the SPT and he obviously quit working; but he does not receive a pension from the Trust, and is not eligible to receive one.

It is true, as the Union argues, that nothing in the PEP letter says a former employee must receive a pension to qualify for a PEP. But the PEP references the SPT as part of its eligibility criteria; an employee has to be a "Participant" in the SPT to be eligible for a PEP. It is hard to understand why the parties would have conditioned PEP eligibility on an SPT criterion, and then divorced the PEP use of the word "retirement" from the definition used in the SPT. The Union is willing to look to the terms of the SPT to define "Participant"; it cannot refuse to do the same when defining a "retiree." And, as noted above, a "retiree" under the SPT is someone who "is receiving pension benefits from the trust," a definition that does not include Grievant. Given that the PEP is described as a pension "enhancement," it is reasonable to believe that the parties understood the lump sum payment would add to (i.e., enhance) the pension payable under the SPT. Nothing in the PEP indicates that it was intended to provide a severance payment to employees who decided to quit before they were eligible to receive a pension.

It is true that in ArcelorMittal Case. No 42, I said the PEP was not restricted to employees who had received a reduced pension from the PBGC, and that I based that decision in part on the fact that the PEP language itself did not restrict eligibility to such employees, as it had in other steel industry agreements. But that case did not discuss whether an employee was retired; rather, it focused on whether the Company should have understood that a Union proposal indicated its intent was to broaden the number of employees who would qualify for a PEP. I

found that in the circumstances of that case, the Company should have understood that the Union was not merely seeking what other companies had negotiated. But that analysis does not apply to this case. There was no reason to suspect that the Union's intent in negotiations was to provide a PEP to short term employees who were not eligible for a pension merely because the employees claimed to have retired .

AWARD

The grievance is denied.

s/Terry A. Bethel

Terry A. Bethel
April 1, 2012