# ARBITRATOR'S AWARD

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In the Matter of the Arbitration
Between

United Steelworkers of America, Local Union 979

and

ArcelorMittal, USA
Cleveland, Ohio

Case No. 58

May 25, 2012

David A. Dilts
Arbitrator

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APPEARANCES:

For the Union:
Tom Zidak, Staff Representative
Mark Granakis
Tom Scott
Russell Sheffler
Michael Mormile

For the Company:
Thomas H. Barnard, Attorney-at-Law
Dino Spirids
James Wozniak
Mack Kovach
Janet Jordan
Mickey Day
Debbie Santora
Keith Booker

Hearings in the above cited matter were conducted on March 26, 2012 at the Holiday Inn, 6001 Rockside Rd., Independence, Ohio. The parties stipulated that the present matter is properly before this Arbitrator pursuant to Article Five, Section I of their 2008 Bargaining Labor Agreement (BLA). The record in this case was closed receipts of the parties' post-hearing briefs on April 26, 2012.

## ISSUE

The parties stipulated that the issue before this Arbitrator is:

Whether the Hot Dip Galvanizing Crane (Entry - CAL1) Operator should be reclassified from a Labor Grade 2, Service Technician, to a Labor Grade 3, Operating Technician?

## BACKGROUND

AcelorMittal USA (herein the Company or Employer) operates a mill in Cleveland, Ohio; the bargaining unit employees of the Company's mill are represented for purposes of collective bargaining by the United Steelworkers of America, and its Local Union No. 979 (herein the Union). The parties current collective bargaining agreement was negotiated in 2008.

The Union filed a grievance on February 9, 2010 (Joint exhibit 2) stating:

Statement of Grievance:

*The Hot Dip Galvanizing Crane (Entry - Cal 1) Operator performs te duties described in the Operating Technician Labor Grade 3 Job Description (Appendix D - BLA dated Sept. 1, 2008) and therefore should be paid LG3. McCall/Arouca letter pg. 131 BLA.*

Union Position & Remedy:

*Request CAL- 1 Crane is classified as an Operator Technician Position and to be compensated as a Labor Grade 3 Pay Scale.*

The grievance was denied at Step 1 of the grievance procedure, as were subsequent appeals through the parties' negotiated grievance process. The Union filed a timely demand for arbitration and the parties stipulated that the present matter is properly before this Arbitrator pursuant to Article Five Section I of their 2008 Bargaining Labor Agreement.

## UNION'S POSITION

The Union provided expert testimony in the form of Mr. Tom Scott who has been a crane man for 30 years. The Company has used Mr. Scott as a Crane trainer for several years and he has operated every crane used by the Company. Mr. Scott testified that there is only one crane in the building that supplies the Hot Dip Galvanizing line and without this crane everything comes to a standstill. The crane is the first step in the process of producing a quality product at maximum productivity rates.

The Company has argued that the Hot Dip Galvanizing line could continue to run for a period of time without the Cal-1 crane in operation. The fact is, the only way to accomplish this would be to slow the process way down which would go against the idea of a quality product at maximum productivity. Mr. Scott testified that the Cal-1 crane is also used to unload the tandem mill conveyor. He further testified that this conveyor was not very reliable and that the Cal-1 crane is used to do maintenance.

The Company did not question Mr. Scott's expertise. As a matter of fact, when certain items were wrongly presented by the Company as evidence (such as pictures and other items), Mr. Kovach, who is the Division Manager, looked to Mr. Scott for answers when there was

confusion on the Company's side. Mr. Scott is looked to and relied on almost exclusively for everything from quality to safety in these matters.

The word INTEGRAL means a part of a whole and completeness of the whole. The Company argued that other cranes such as RS 22, were given labor grade position 3 because of highly skilled crane operations which were INTEGRAL to the operating unit. Mr. Wozniak testified that as far as he knew, the terminology on highly skilled was never defined.

The Union also believes the Company violated the BLA by introducing evidence and testimony which was never introduced in any step of the grievance procedure and especially the third step (see page 53 under general provisions c). The Union objected to this during the arbitration hearing. This evidence changed their original reason for denying the grievance. The Union respectfully requests that the Arbitrator disregard any evidence not introduced in the third step. The Company, through its attorney, never argued that the Union was wrong in its assertion about the new evidence. The Union asked Janet Jordan, Human Resources Director, if the Company ever raised the issue of the Union not getting in negotiations which it is requesting through arbitration, and Janet responded no and testified that it was never discussed.

The Union believes that the Cal-1 crane is an integral part of the Hot Dip Galvanizing process. This is the only crane in the building and must keep up with two units – the Hot Dip Galvanizing line and the Tandem Coil Delivery Conveyor. This crane has to move in tight quarters and also has to work with maintenance personnel similar to other cranes which already receive labor grade 3 pay.

For all of the reasons described above the Union respectfully requests that the grievance be sustained and that all monies lost be retroactively paid back to the date of the filing of this

grievance.

## COMPANY'S POSITION

In contract disputes, such as this, the Union bears the burden to prove that the Company has somehow violated the BLA. The Union has not shouldered that burden of proof and this grievance must be denied as being without merit on several grounds.

The Union and Company entered into the current Labor Agreement in September of 2008. During those negotiations the parties determined that several crane operator positions were Labor Grade 3 positions. The Crane Operation position, Cal-1, which is at dispute here, never made it beyond local discussions for consideration for Labor Grade 3. Implicitly, therefore, the parties' agreed that this position is properly a labor grade 2. The Union is attempting to gain through arbitration what it could not achieve at negotiations.

The Union's objection to the contention that the Company's argument that it is attempting to gain arbitration what was not obtained in bargaining is without merit. The argument that the Company made was just that, argument. What is barred by the BLA is new facts or BLA provisions alleged to have been violated. In this case, the Company stands by the propriety of its argument that the plain language of the contract bars the Union's interpretation, and this is proper argument at arbitration.

Even of Cal-1 is compared to the two Cleveland cranes which were moved to Labor Grade 3 during negotiations, it fails to measure up to the specialized functions and skills required for those two cranes. The McCall/Arouca letter, by its plain language, specifically states that:

"should disputes involving other crane Labor Grade issue arise during the term of this Agreement, the above cranes maybe used as benchmarks pursuant to Article Five Section B of BLA." The Union now seeks to boot strap its argument by creating a disputes so it can get a reclassification of Cal-1. It does that by looking at the first part of the sentence while ignoring the second part of the sentences which directly connects the "issues" which may "arise" to Article Five Section B. Article Five Section B specifically relates to those instances where "the Company chooses to modify the duties of an existing job." In this case, there has been no modification of the duties of Cal-1.

Even if it were that the Union was allowed to revisit the grade of an existing job, the Cal-1 job is not comparable to the RS22 or the South Hot Rolling Slab Yard Crane. The fact is, that the Cal-1 performs routine functions which do not require comparable high levels of skills which are necessary to the other two cranes. The Union did not seriously argue that the Cal-1 crane was comparable to the RS22, arguing instead that the Cal-1 was comparable to the Slab Yard Crane. The Slab Yard Crane lifts slabs, both hot and cold, weighing up to 30 tons a piece and may lift up to six or eight of them at one time. The Cal-1 lifts a single 30 ton roll with man-saver pincers, not so with the Slab Yard Crane. It is far more tricker and risky to lift slabs than it is to lift coils – in addition to the differences in the total weight lifted. With stacked slabs it is clear that the operator must be extremely skillful so that the slabs are properly controlled and are not dropped.

The Union argues that the whole case simply turns on a definition of integral. It points to one word from the Arouca/McCall letter to make this argument; however, the Union takes this one word out of context. In careful reading of that letter, it is clear that the word "integral" is always linked to the phrase "highly skilled." Further, the Union ignores that the last paragraph of

that letter which cites Article Five Section B of the BLA. The plain language of this provision of the BLA sets forth procedures when "the Company chooses to modify the duties of an existing job." Clearly, the Company has not modified the duties of the Cal-1 operator, and therefore, the trigger for the application of this provision is absent under these facts and circumstances.

The Company respectfully requests that this grievance be denied in its entirety as being without merit.

## ARBITRATOR'S OPINION

The parties made several arguments and introduced considerable evidence and testimony in support of their respective positions concerning the duties of the Cal-1 crane operator at the Company's Cleveland facility. Although there are factual disputes between the parties' concerning the skills required of the Cal-1 crane operator, there are also factual agreements between the parties.

The parties agree that the McCall/Arouca letter (Joint exhibit 1, p. 131) is the agreement which concerns the labor grades for crane operators, including changes or modifications of the subject jobs. This Arbitrator is also persuaded by the record of evidence that there has been no change or modification in the duties for the subject Cal-1 crane operator since the effective date of 2008 BLA.

In essence the parties are asking the Arbitrator to interpret and apply the McCall/Arouca letter to the facts and circumstances of this case. The McCall/Arouca letter is a communication from Dennis Arouca, Vice President of Labor Relations to David McCall, Director of District 1

of the United Steelworkers, contained in Appendix B to the parties' BLA. It is this letter which memorializes the mutual intent of the parties with respect to crane operator pay grades. This letter says:

Dennis McCall
USW District 1
United Steelworkers
777 Dearborn Park Lane - J
Columbus, OH

Dear Mr. McCall:

During discussions leading to the 2008 BLA, the Union presented the Company with a list of various crane assignments for the parties to discuss and determine which such assignments, if any, are highly skilled and which are integral to the operating units. This letter will confirm our understanding reached on those cranes assignments which are currently being paid at Labor Grade 2 and upon the Effective Date will be increased to Labor Grade 3. The parties agreed that the below list of cranes are to be considered highly skilled assignments which are integral to the operating units.

1. Burns Harbor - 501 Hot Rolling Slab Yard
2. Cleveland - South Hot Rolling Slab Yard, RS 22 Finishing Pickle/Tandem
3. Hennepin - 300 Finishing Pickler
4. Indiana Harbor West - 3 Hot Rolling Slab Yard, 2 East Finishing Pickler
5. Indiana Harbor East - 22 Hot Rolling Slab Yard, 27 Finishing Pickler
6. Conshohocken - 113 Hot Roll Slab Yard

It is further agree that, in light of the changes to the Operating Technician job description contained in this Agreement should disputes involving other crane Labor Grade issues arise during the term of this Agreement, the above cranes may be used as bench marks pursuant to Article Five Section B of the BLA.

Sincerely,

Dennis Arouca,
Vice President, Labor Relations

confirmed:
David McCall
Director District 1

The Union contends that the Cal-1 crane is a highly skilled assignment which is integral to its operating unit and therefore must be paid at the Labor Grade 3 rate. The Union's interpretation derives from the last sentence of the first paragraph of the McCall/Arouca letter, and was the standard used by the parties in determining the list of crane assignments, therein contained, which are compensated at Labor Grade 3.

The Arbitrator is persuaded that there is merit to the position taken by the Union if only the first paragraph of the letter is considered. However, there is a second paragraph which follows the list of Labor Grade 3 crane assignments. This second paragraph discusses the possibility of disputes arising during the life of the BLA concerning "Labor Grade issues." The parties agreed that the cranes listed in the McCall/Arouca letter would be used as benchmarks "pursuant to Article Five Section B of the BLA." This Arbitrator is persuaded that the McCall/Arouca letter contemplates that "Labor Grade issues" are subject to the requirements of Article Five Section B.

The language of Article Five Section B is entitled "New or Changed Jobs." Several provisions exist within this Section of Article Five. Paragraph one describes a committee to be formed for purposes of the evaluation of jobs for the purposes of this Section. Paragraph two of Article Five Section B describes the parties' mutual intent as to the applicability of this Article Five Section B of the BLA, which states:

> 2. In the event the Company chooses to modify the duties of an existing job or create a new job, it shall follow the procedure outlined below.

The Union identifies the McCall/Arouca letter as its authority for complaining about the Labor Grade for the Cal-1 crane; albeit the Union relies on paragraph one without any limitations from paragraph two of the letter. The problem for the Union's theory of the case is that letter clearly identifies Article Five Section B as the trigger for the application of McCall/Arouca letter. In other words, the plain language of Article Five Section B specifically limits the Arbitrator's authority in paragraph 6 of Article Five Section B, which states:

> 6. The arbitrator shall base his/her decision on the Requirements of the new or modified job and how those Requirements compare to the Requirements for the existing jobs at the plant and other plants of the Company.

The Union argues the first paragraph of the McCall/Arouca letter as the basis of their grievance, however, that is reading the first paragraph in isolation from the remainder of the language of the parties' agreement contained in that letter. The parties' mutual intent is what binds them, and this Arbitrator. The Arbitrator is obliged to read the entirety of the parties' agreement to glean from it, their mutual intent. Clearly, the language of Article Five Section B applies to changed or modified assignments – a fact that the Arbitrator is instructed not to ignore by the plain language of the parties' contractual language. Further, the parties adopted a general restriction on the authority of arbitrators in interpreting and applying the provisions of their 2008 BLA which is a rather common restriction in general industry.[1] This restriction is found at Article Five Section I paragraph 6, b, which states:

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[1] See Elkouri and Elkouri, *How Arbitration Works, sixth edition.* Washington, D.C.: Bureau of National Affairs, Inc., 2003, pp. 460-64 for further discussion.

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 in the provisions of this Agreement or the Insurance Agreement. [emphasis added]*

To interpret the BLA, specifically the McCall/Arouca letter, as proposed by the Union, would require the Arbitrator to ignore the last paragraph of the subject letter and the applicability Article Five Section B to this dispute, which is not permitted by Article Five Section I, paragraph 6 (b). This the Arbitrator cannot do without a showing that the duties of Cal-1 crane operator qualify for revisitation under the provisions of Article Five Section B of the parties' BLA. There was no evidence proffered at hearing that the duties of the subject assignment were somehow modified, changed or otherwise qualified for evaluation under the requirements of Article Five Section B.[2]

**Conclusion**

This matter does not involve a modified or changed crane assignment. The record concerning whether the subject assignment was a highly skilled assignment integral to its unit was subject to dispute, but not critical to the proper interpretation of the McCall/Arouca letter.

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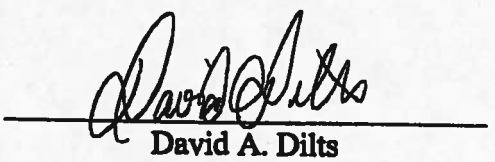
[2] The Union complains that Management did not provide certain arguments and evidence by the third step of the grievance procedure. The Arbitrator is persuaded that the McCall/Arouca letter was argued, and there was no objection beyond the claim that Management made concerning its characterization that the Union was attempting to obtain in arbitration what was not achieved in negotiations – that Management argument was not given consideration in arriving at this decision.

The second paragraph of the McCall/Arouca letter makes clear that disputes concerning labor grades during the life of the BLA is subject to the requirements of Article Five Section B. Article Five Section B requires there to be a changed or modified assignment for the McCall/Arouca letter to trigger an evaluation of the subject position for purposes of Labor Grade dispute resolution. Therefore, this grievance is without merit and must be denied.

## AWARD

The grievance is denied as being without merit.

At Fort Wayne, Indiana
May 25, 2012



David A. Dilts
Arbitrator