

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA  
GEORGETOWN, S.C. PLANT

And

ArcelorMittal Case No. 65

UNITED STEELWORKERS  
INTERNATIONAL UNION AND  
LOCAL UNION 7898, USW

OPINION AND AWARD

Introduction

This case from the Georgetown Plant concerns the Union's claim that the Company improperly laid off Grievant Brandon Patterson when the Company reduced operations from three shifts to two shifts. The case was tried in Georgetown, South Carolina on September 4, 2013. Eric Schweitzer represented the Company and James Sanderson presented the Union's case. Grievant was present throughout the hearing and testified in his own behalf. The Company raises a procedural arbitrability issue, arguing that the grievance was not filed during contractual time limits. I will discuss the procedural issue and the issue on the merits in the body of the opinion. The parties submitted the case on final argument.

Background

Grievant was one of several employees laid off on October 26, 2012, when a decline in orders caused the Company to curtail its operation to two shifts. The Union said that prior to the acquisition by International Steel Group (ISG) in the mid-1990s, layoffs were handled by seniority. However, under the CBA between ISG and the Union, qualifications played a central

role in determining who would be laid off, and seniority was determinative only when qualifications were relatively equal. The ISG contract pattern --- which introduced significant changes to the traditional pattern of steel industry CBAs --- remained in effect after ArcelorMittal began operating the Georgetown Plant. The layoff language in the current Agreement reads, in part:

In all cases of promotions, decreases in force and recalls after layoffs, the following factors shall be considered:

- (1) Ability to perform the work and physical fitness; and
- (2) Plant Continuous Service (Plant Service)

Where factor (1) is relatively equal, Plant Service shall be the determining factor.

During Local Issue negotiations in 2012, the Union proposed guidelines to govern layoffs at the plant. The proposal would have required the Company to demote the least senior employee in an affected line of progression (LOP). The language also would have restored limited bumping rights. Union Shop Steward Bob Evans said he discussed the language with Company Labor Relations Manager Jim Paull, who seemed willing to agree to it; however, a day or so later, Paull told Evans that the Company would not agree to the proposal, and that the issue would have to be referred to the main table negotiations in Pittsburgh. On August 31, 2012, the parties signed Local Issue Agreement #11, adopting a layoff procedure that did not include any bumping rights. The Local Issue also included the following language:

Senior Qualified means the employee who is more qualified e.g. knows all the jobs in their box would be retained vs. an employee who does not know all of the jobs in their box. If qualifications are equal then seniority prevails.

Another part of the ISG pattern introduced in 2002 involved a combination of certain job functions into boxes that resided in an LOP. In most cases, the functions listed in the box were

former job classifications. The new structure allowed the Company considerably more flexibility than it had under previous agreements, because a qualified employee could be assigned to perform any of the functions in the box. Grievant was in the Furnace Service Tech Box within the Steelmaking LOP. There is no dispute that Grievant was qualified to perform all of the job tasks listed in his box.

About a week before the scheduled October 26 layoff, Evans and Paull met to discuss which employees would be laid off. This necessitated a review of employee qualifications, because seniority was no longer the principal determinant in layoffs. Evans said he and Paull had no difficulty determining who would be laid off and who would be retained in the rod mill, because Paull brought training records of those employees to the meeting; however, he did not bring comparable documents for the steelmaking employees. Evans said when the discussion turned to steelmaking employees, Paull gave him a list of names of the employees who would be laid off. Evans, who did not work in steelmaking, said he did not know the qualifications of steelmaking employees, and, thus, was not in a position to question the Company's list. Grievant apparently was not on the list of employees to be laid off.

The controversy in this case is the propriety of the Company keeping Brandon Gibson and laying off Grievant. There is no dispute that Gibson is senior to Grievant; however, Grievant was qualified to perform all of the jobs in his box, and Gibson was qualified for only one job in the box. The Union says in accordance with the priority given qualifications under Local Issue Agreement #11, the Company should have laid off Gibson and kept Grievant, even though Gibson was senior to Grievant.

At some point after the Evans-Paull meeting on October 24, 2012, employees began raising concerns about the layoffs. One of those concerns was whether the rod mill would need

more employees for vacation relief than were slated to be retained. In response, on October 25, 2012, Danie Devapiriam, General Manager, and James Sanderson, Local Union President and Training Coordinator, entered into an agreement titled, "Addendum to Georgetown Layoff Procedure," which says, in relevant part:

This memo will confirm the understandings that have been reached concerning the above stated matter. As agreed, the parties have settled and resolved without precedent or prejudice to either party's position in any current or future matter as follows:

For the Reduction in Force taking place in October of 2012 the parties agree:

- Employees who occupy a box in the Line of Progression (LOP) and have been qualified in another box in the LOP will be allowed to bump/displace a less senior employee in the box they had previously qualified in
- Allowing this the employee who has bumped/displaced a co-worker can be asked and will work in all the positions they are qualified to work in
- Affected employees are:
  - Rod Mill retained employees are Cody Evans and Shauwn Gibbs; those that will be laid off as a result will be Fred Stafford and Jacob Reid
  - Steel Making retained employee is Brandon Gibson; employee that will be laid off is Chris Benton

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Paull said when the Union proposed keeping Evans and Gibbs, the Company said it wanted to keep Gibson. The Company acknowledged that Gibson was only qualified as the scrap clerk; however, the Company needed Gibson's knowledge of and skills in scrap inventories. Without the addendum, Paull said, Gibson would have been laid off and Grievant

probably would have been retained. Chris Benton, who is mentioned in the addendum, was not laid off in exchange for keeping Gibson, Paull said; Benton was already scheduled to be laid off. But when the parties decided to keep Gibson, somebody had to be laid off in his place. Grievant and an employee named Linen both had seniority dates of June 6, 2011, but Linen had the lower clock number, so Grievant was the one laid off.

Paull agreed that in his initial meeting with Evans, he did not have training documents for steelmaking employees. But, he said, Evans subsequently met with the Area Manager for Steelmaking, who shared information about qualifications. Evans, Paull said, identified a craneman who should be laid off ahead of a junior craneman, because the junior craneman was qualified to operate two cranes, and the senior craneman was only qualified to operate one. This demonstrated, Paull claimed, that Evans had information about employee qualifications.

Evans pointed out that Article 5-E-2-b says that the application of seniority factors already in effect can be changed only by “a local written agreement signed by the grievance chair.” Grievance Chair Howard did not sign the Addendum. Although Evans acknowledged that Local President Sanderson signed it, he said the Local Union is amalgamated, meaning that it also represents employees at other workplaces. Sanderson did not talk to Evans about the Addendum before he signed it, and Sanderson did not know whether Gibson was a fully qualified Furnace Service Tech. Paull testified that even though Article 5-E-2-b says the Grievance Chair will sign agreements changing the application of seniority factors, the practice at Georgetown has been for the Local Union President to sign such agreements on the Union’s behalf, and for the General Manager to sign for the Company.

## Positions of the Parties

The Union argues that it was not given an opportunity to review steelmaking employee qualifications prior to the layoff, which allowed the Company to “secretly and deceitfully” modify the layoff language via the Addendum. Prior to the 2012 layoff, employees had the right to bump junior employees, but that was lost under the ISG Agreement. The Company, however, negotiated the right to require employees to perform several different jobs, and, even though they could no longer bump, employees could protect themselves against a layoff by learning all of the jobs in their box, which Grievant did. Losing bumping rights was a bitter pill for the Union, it says, but it did provide motivation for employees to learn other jobs. Employees who did so were not supposed to be laid off ahead of employees who were not qualified on all the jobs, but that is exactly what happened to Grievant in this case; he was laid off and Gibson was retained, even though Gibson was only qualified in one job. This would not have happened, the Union claims, if the Company had allowed Union negotiators to see qualification sheets prior to the layoff. The Union acknowledges that Local Union President Sanderson signed the Addendum, but it claims the Company’s tactics were “ambiguous and deceitful”; the Company did not tell Sanderson that it was laying off a fully qualified employee in favor of an employee who was only qualified as a scrap clerk. Had Sanderson known that, he would never have agreed to the terms of the Addendum.

The Company says Paull worked with Evans to insure that the August 2012 layoff agreement (Local Issue #11) would be implemented properly. The parties wanted some changes to the procedure, so they agreed to the Addendum, which gave employees some of the bumping rights they were unable to achieve in the 2012 local issue negotiations. In that same document, the Union proposed --- and the Company agreed --- to keep two employees who might otherwise

have been laid off. At the same time, the Company proposed --- and the Union agreed --- to retain Gibson, who, despite his seniority, would probably have been laid off in favor of Grievant, who was qualified in more areas. Because of the Addendum, two rod mill employees were not laid off and two steelmaking employees were laid off, including Grievant. The Company said it acted in good faith, and that it was fair for it to assume Union officials who negotiated the Addendum understood its terms, and would discuss them with the Local Union President before it was signed.

The Company denies that its actions were deceitful, and, it says, if the Addendum is to be repudiated, then the question of trust falls on the Union, not the Company. The Union did not request information about training, the Company argues, and, in any event, Evans' actions indicated that he was aware of employee qualifications. If the Union was unaware of employee qualifications in steelmaking, it was its responsibility to address the issue before agreeing to the Addendum. The failure to do so, the Company says, does not undermine the parties' agreement in the Addendum that Gibson would be retained.

### Findings and Discussion

The Company contends that the grievance was untimely. The contract requires that a grievance be filed, "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." Grievant was laid off on October 26, 2012, but did not file his grievance until May 8, 2013, more than six months later. The Union says Grievant did not know Gibson's qualifications, so he had no reason in October 2012 to believe that his layoff was improper. But he filed his grievance well within the 30 day period when he learned in May 2013 that his layoff was improper. Thus, the Union says the

grievance was timely. Despite the Union's claim to the contrary, it seems likely that the grievance was untimely. However, I need not decide the case on the procedural issue because the Union cannot prevail on the merits, in any event.

Although there was some conflicting testimony about whether Grievant would have been laid off absent the Addendum, the record supports a finding that Grievant was laid off because of the parties' decision to retain Gibson, despite his lack of qualifications. It is true that the parties' 2012 layoff agreement (Local Issue #11) required that a fully qualified employee be retained over an employee --- even a senior employee --- who was not qualified on all the jobs in his box. But the parties agreed to modify that procedure in the October 25, 2012 Addendum. They did not change the basic structure; for the most part, fully qualified employees still had preference over employees who did not know all of the jobs in their box. However, the Addendum identified certain employees who were to be retained regardless of qualifications, including Gibson.

Even though the Union says it was not aware of everyone's qualifications, it surely understood that without the Addendum, Gibson would have been laid off; otherwise, there would have been no need to specifically identify him as someone who would be retained. And it should have known that if Gibson was to be retained, someone would have to be laid off in his place. It may be, as the Union contends, that the Local President signed the Addendum without being aware of its impact on Grievant. But this was not a one-sided negotiation that forced unwanted terms on the Union. The parties to an agreement are responsible for protecting their own interests, and then living with the consequences of the deal.

The Union also points to Article 5-E-2-b, which requires that the Grievance Chairman sign any agreement modifying seniority factors. However, the Union did not rebut Paull's



testimony that the practice at Georgetown had been for the Local Union President to sign such agreements. The Union benefited by getting limited bumping rights, and by retaining at least two employees who otherwise would have been laid off. It cannot accept those benefits and then seek to avoid the rest of the bargain.

In this case, the Addendum says the Company had the right to retain Gibson, which it did. Grievant was laid off as a consequence of that agreement. I find no reason to question the legitimacy of the Addendum or its effect on Grievant. Thus, the grievance must be denied.

AWARD

The grievance is denied.

*s/Terry A. Bethel*

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Terry A. Bethel

November 4, 2013