IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
CONSHOHOCKEN PLANT

And

ArcelorMittal Case No. 84

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 9462, USW

OPINION AND AWARD

Introduction

This case from the Conshohocken Plant concerns the Union's claim that the Company failed to modify the Heat Treat and Finishing Production incentive plan following changes that affected the employees' earnings opportunity. The case was tried in the Company's offices in Conshohocken, Pennsylvania on August 4, 2017. Richard Samson represented the Company and Lew Dopson presented the Union's case. The parties agreed there were no procedural arbitrability issues and that the case was properly in arbitration. The parties also agreed that the issue on the merits was whether the Company was required to modify the plan in the existing circumstances. They submitted the case on final arguments.

Background

The Company has a number of incentive plans, including one for the heat treat and finishing employees (HTF Plan). All of the plans were designed to offer employees an earnings opportunity of 20%. The parties agree that 20% earnings were not guaranteed under the plans. Ron Davis, the Union's Grievance and Incentive Chairman, testified that the HTF Plan was

developed in 2004 and included a quench and temper (Q&T) component, a cut-to-length (CTL) component, and a manhours-per-shipped-ton component. The plan has been modified over the years. In February 2005, for example, the parties agreed to remove the cut-to-length component from the plan because that work was no longer being performed. Also, the manhour-per-shipped-ton component was adjusted to account for military shipments, which Davis described as a change in the material processed. The parties agreed to another adjustment in April 2005, which removed training hours from the manhours per shipped ton component, a change necessitated by a reorganization agreed to in collective bargaining that greatly reduced the number of job titles and lines of progression, and required that employees be cross-trained. An adjustment on May 3, 2011 also addressed a change in the plan because of a materials change that required more heat treatment. The number of janitorial hours included in the manhours calculation was also reduced.

As part of the 2012 contract negotiations, the parties entered into a Memorandum of Agreement saying that they would develop a new incentive plan that would replace the manhours component of the HTF plan. The new plan would have two components: a heat treat productivity component, which was the current Q&T component, and a manhours per ton shipped component. The baseline for the manhours component of the plan would be the average performance over 2010-2011. The parties agreed to complete work on the incentive issues within 60 days of the September 1, 2012 effective date of the new contract, and to make it retroactive to August 1, 2011.

By October 2013, the parties were still trying to negotiate the new plan. At some point in October, the Company asked the Union to change the baseline. The Company was running new material for Trinity, which required fewer manhours to produce, and which accounted for 25% of

production. Davis said the Company contended that maintaining the current baseline would result in a windfall under the incentive plan. In a Memorandum of Agreement dated October 29, 2013, the Union agreed to change the baseline to September 1, 2012 to October 5, 2013, a period that included the Trinity production. Davis said the Union had always agreed to make changes that it believed were fair and equitable. In addition, the October 29 Memorandum of Agreement provided that the change would be retroactive until August 2011, but, Davis said, subsequently the Union agreed to stop the retroactivity in November 2012, which it thought was fair. The employees were paid an average incentive of 28% under the revision.

Although the HTF plan paid well in 2014, in 2015, the average fell to 6.3%, with the employees reaching 20% or more in only five weeks. In 2016, the average was 3.02%, with the 20% goal reached only once. The Union filed the grievance at issue in this case on April 29, 2015, claiming:

> Based on changes of processing and quality standards – changes of materials processed – Trinity product is no longer part of product mix. The earnings opportunity has been negatively impacted.

As a remedy, the Union asked the Company to "Modify existing HT&F incentive plan. Retroactive to January 1, 2015."

The Union's case relies on Article 9.B.2 of the Agreement, which provides, in relevant part:

> The Company shall establish new incentive plans to cover newly created jobs. The Company shall also modify existing incentive plans where new or changed conditions resulting from mechanical improvements made by the Company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards impact the earnings opportunity provided under an existing incentive plan. In all other circumstances, existing incentive plans shall remain unchanged.

Davis said the Union filed the grievance because of the sharp decline in incentive payout from 2014 to 2015. By the time the grievance was filed in April 2015, the Union was aware that the Company had lost the Trinity business. In 2014, the Company shipped 70,539 tons for Trinity; in 2015 the number fell to 6,899 tons, and there were just 7 tons in 2016. Davis said the influx of Trinity work was why the Union agreed to change the base line in 2014. But by 2015, the 2012-2013 baseline was no longer representative of the work employees were performing.

Davis discussed several factors the Union believes contributed to the reduced incentive earnings. One exhibit concerned the Company's quality performance statistics for Conshohocken, which reports additional work that must be performed. The Company's goal is 24%. But in September 2016, the figure was over 39%. The extra work exceeded 28% six times in 2016, with three of those months over 30%. All of this extra work, Davis said, adds manhours to the process and negatively affects the incentive plan. In addition, Davis said the equipment is in poor condition, which affects production. He also said quality standards have increased, which requires additional manning. Beginning in 2014, the Company required inspectors to inspect the bottom of plates, and also required the blaster operator to inspect the plates. Also, the shear line can stop production if there is a quality issue, something it did not do historically. And, there is an inspection at the load bank. The Company has also implemented side shearing and it increased the number of employees on cold leveler 1. Davis also cited the redo rate for Q&T, which was .6% in 2014, but was between 5 and 6% in 2015 and 2016, and has gone as high as 19% for some weeks in 2017. All of these changes cause additional manhours, Davis said.

Davis identified an email dated May 11, 2016 in which HR Manager Joanne Babian wrote that she remembered saying they needed a new incentive plan "and we have been looking

into that." On July 28 and 29, there was an email exchange between Davis and Division Manager Paul Waterman in which Davis asked if the Company had an incentive plan proposal. Waterman responded, "Not finished yet. Will give it to you for comment as soon as I have something." On September 7, 2016, Waterman sent anther message in which he said he thought they were making progress on a plan, and that he had discussed a proposal with the person who developed it at Corporate. He said Corporate was updating the proposal based on that discussion. A November 4 email from Waterman said he thought "we are close to completing a proposal" and that he hoped to have something midweek. The parties agreed to meet on December 8 and, Davis said, he thought the Company would make a proposal on the plan. Instead, the Company gave the Union a document titled Step 3 minutes, which denied the grievance. The parties had an additional Step 3 meeting on February 2, 2017.

On cross examination, Davis acknowledged that the parties had earlier agreed to a minimum incentive payment of 10.38%. Thus, even in periods that showed very low or zero incentive, the employees received 10.38%. He agreed that market demand for the Company's product was reduced. The Company shipped about 280,000 tons in 2014. That was reduced to 160,000 tons in 2015 and 130,000 tons in 2016. But, Davis said he did not believe the reduction in the volume of work contributed to the low incentive averages that began in 2015. He noted that none of the other incentive plans, which also included manhours components, were so low. The reduction in HTF incentive, he said, corresponded with the decline in Trinity business. Davis agreed that the series of emails concerning a new plan did not say there had been a changed condition under Article 9.B.2, but he noted that one of the emails referenced a need to change the plan. He also disputed the Company's claim that the purposes of considering a new plan was to incentivize employees. Had that been the case, Davis claimed, the process would not

have taken two years. Davis also disputed the Company's claim that there had been no change in quality standards. He said customers will no longer accept certain defects, and that the tolerances had changed and the specifications were stricter. The Company had to add manhours to meet these changes, Davis said.

Davis testified that the Company had not mentioned a reduction in volume as the reason for the plan's lower performance prior to the arbitration hearing. And, he reiterated that a reduction in volume could not be the sole reason for the low incentive performance because the other plans in the plant did not go down as much as the HTF plan. The Company pointed to the third step minutes, in which the Company said a "market loss" did not require it to modify an incentive plan. But, Davis said the Company never described a market loss as a drop in volume. He also said that even though the overall market for the product was lower, the plant held 26% of the market both before and after the reduction in incentive payments. Thus, he said the Company had not experienced a market loss. He also agreed that the slab yard plan had three components, and manhours counted for only 20% of the calculation. And, Davis acknowledged, the mill plan uses tons per hour, not manhours.

Division Manager Waterman said the heat treat plan is 60% heat treat and 40% manhours per tons shipped. The heat treat portion has two components: 50% pieces per hour and 50% tons per hour. He also said Q&T is the fundamental driver of the HT plan. The finishers' incentive formula is 60% manhours per shipped ton and 40% heat treat. Waterman said all of the plans are based on the historical performance over a selected time period; if the current performance matches that baseline, then the payout is 20%. Employees can also receive more or less than 20%, depending on performance. Waterman agreed with Davis that in the 2012 negotiations, the parties committed to working on a new plan. Shortly after negotiations ended, the tank car

market became "extremely robust" and the plant began receiving work from other ArcelorMittal locations. It became clear, he said, that the 2010-2011 baseline the parties were using was not representative of the work the bargaining unit was performing. The parties worked on a revision and in October 2013, they came up with a baseline of September 2012 to October 2013. After that, the HTF payout was about 30%, but the Company did not seek a change to a different baseline.

The reason the incentive payouts dropped, Waterman testified, was the dramatic decline in the tank car business. In 2014, the plant shipped 280,000 tons. In 2015, the number dropped to 160,000 tons, and in 2016 it was 130,000 tons. As of the time of the arbitration hearing, Waterman believed shipped tons would also be 130,000 tons in 2017. Waterman agreed that for ArcelorMittal, the overall share of plate production has stayed at 26%; but, he said, there was still a significant drop in volume for Conshohocken. The plant laid off employees in the second half of 2015 and through 2016. Employees still on layoff were recalled in the first quarter of 2017, but the number of employees in the bargaining unit was still lower than before the layoffs due to attrition caused by retirements or employees quitting. At the beginning of 2015, there were 268 employees in the bargaining unit; at the time of the hearing, there were 204 employees, 12 of whom were on some sort of medical leave. Waterman said the plant was trying to get more work, and he was optimistic about a military program the Company recently began working in.

Waterman denied that quality standards had changed. That term is synonymous with specifications, he said, and there were no specification changes. He acknowledged the Company had taken some steps to do a better job of meeting specifications. Load bank inspections began in mid-2015, which consists of observation, not testing. If there are problems, the load bank can send the product back to be reworked. The plant also added a quality inspector at the shear line

to insure plates met customer specifications. Previously, if the process was producing a defect, the line kept running and the product would then be sent for rework. This rework caused additional manhours. In one instance, Waterman said, the plant produced over 100 plates with the same defect. Now, if the inspector finds a defect caused by a piece of equipment, he can stop the line to fix the problem. Waterman acknowledged that this procedure can cause more stoppage time, which affects production. But, he said, some of the stoppage time is offset by avoiding rework. He also said that in 2015, there was 28.5 % delay in the operation, only 0.15 percent of which was caused by quality shutdowns.

The Company has also started inspecting the bottom of all plates in heat treat. Previously, only about one plate per hour was inspected. Now, the plates are taken off the line and put on horses, where the bottom can be inspected. If the inspector finds a defect, he can stop the line to fix the problem and avoid rework manhours. Waterman said the changes have led to some additional manhours, even with the offset of reduced rework. However, he testified that the small addition did not affect the incentive payouts. At present, the employees need to accomplish 1.147 manhours per ton in order to receive a 20% payout. But the performance now is at 1.7 manhours per ton. Waterman said manhours would have to be reduced by 1000 a week to get *any* bonus. According to Waterman, the additional manhours from steps the Company has taken to insure specifications are met would not come anywhere near 1000 hours per week.

Waterman described the changes to the cold leveler 1 operation, which is where plates go that are out of level. The Company uses fibers on the platers to assist with the leveling. Customers of soft material began complaining that the fibers created dents, which were caused by the ends of the fibers that go across the plates. The Company changed the process to cut the

ends to a 45-degree angle, which eliminated the dents in the light gauge soft material. This did not increase manhours, Waterman said, but merely changed "the geometry of the fibers."

Waterman testified that the reason incentive payments dropped was the decline in the market for the products produced at Conshohocken. He agreed with Davis' testimony that the incentive plan was modified in 2005 to account for a change in product mix. But, according to Waterman, the problem in the instant case is not a change in product mix but, rather, a significant drop in volume because of a reduction in demand. And, Waterman said, the same thing was true in 2011, in which the modification recognized a change in product mix, not a loss of volume. Waterman also challenged Davis' claim that the decline in the condition of the equipment affected the incentive payouts. Waterman said the equipment was aging and deteriorating, and he acknowledged that capital improvements that materially changed the processing in the finishing area could affect manhours-per-shipped-ton. But any such changes, he said, would be minor compared to market changes that have reduced the tons produced in the plant. Given that reduction, Waterman said even if the Company had reverted to the 2010-2011 baseline, in 2015 the plan would have paid about 7½ percent. In 2016 it would have paid about 3%, and through June of 2017, the amount would have been 5¾ %. But employees would have received 10.38% in each of those years. He acknowledged, however, that but for the change in the 2010-11 baseline, the payout in 2014 would have been even larger than the 28% the Union agreed to.

Waterman said the discussions about the new plan covered a wide period of time, during which multiple things happened. In 2014 and into 2015, performance at the plant was quite good, but the Union filed the grievance shortly after the market for the tank car business dropped in 2015. Waterman said he had hoped the business would rebound or new business would appear, but that did not happen. Meanwhile, Corporate worked on the details of a new plan,

something that, Waterman stressed, he did not have the authority to do on his own. In that same time period, there was a Corporate evaluation of whether the plant was still viable or whether it should be closed. According to Waterman, Corporate determined that the status quo was unacceptable and that the plant could remain viable only if it could reduce fixed costs. That led to the layoff minimization plan. As he continued to try to reduce costs, Waterman said he believed that to incentivize employees, it would make sense if they were all on the same plan, and he thought the emails introduced by the Union showed there was some progress toward that goal. Waterman acknowledged that the process has been slow, but he said the issues are complex given the need to address changing markets and mixes. He also said the Company was not moving toward a single plan because it thought the BLA required it, although he agreed that the grievance furnished some motivation.

On cross examination, the Union said conditions had changed in 2013, when the Union agreed to change the baseline and reduce the payout because of the increase in Trinity business. The Union asked why the same thing wasn't true in 2015, when the Trinity business was essentially lost. Waterman said the difference was that in 2015, the Company did not continue producing a similar amount of product of a different mix, which is what happened in 2013. Instead, the market for its product was significantly reduced, leading to a big drop in overall production. He agreed that when the parties changed the incentive baseline in 2013, the Union was motivated in part by fairness considerations. But, he said, the issue facing the parties now is different. Waterman said the plant was still trying to get new business, and there had been some new orders.

Brief Summary of Parties' Positions

The Union stresses that it has made changes for the sake of fairness when asked to do so. In both 2005 and 2011, the Union agreed to modify the plan because of changes in product mix, even though the Agreement does not require a modification as a result of product mix. The Union also agreed to modifications in 2013 to reflect changes because of the large quantity of Trinity product that required fewer manhours. Now, however, the Trinity business is gone and the incentive payments have decreased accordingly; but, the Company claims it has no obligation to modify the plan. In 2015, the average payout dropped to 6.3% from an average of 28% in 2014. Over the last 133 weeks, the plan has hit the 20% mark only eight times. It is fair to conclude, the Union says, that the plan does not provide a realistic opportunity for a 20% payout. Nevertheless, the Union says the Company only modifies the plan when doing so suits its own interests. The Union denies the Company's claim that the change in incentive payout is due solely to volume; there have been both changes in quality standards and changes in manning to meet customer specifications, which also goes to quality. The Union also cites deterioration in the equipment, which has affected manhours.

The Company argues that this case does not turn on why the parties may have agreed to modify the plan in the past. The Agreement in Article 9.B.2 says the Company "shall" modify the plan only in limited circumstances, none of which applies here. There have been no mechanical improvements, and the bargaining unit continues to use the same equipment. The processes and the materials processed are the same and the quality standards have not changed. The only thing that is different, the Company says, is a drastic drop-off in customer demand. And, although that has affected the earnings opportunity, steel industry decisions make it clear that a change in the market is not an event that requires the Company to modify the incentive

plan, citing Chairman Garrett's opinion in USC-1890. The Company says a plan based on adjusted manhours per shift is vulnerable to a drop in customer demand, which was a risk the Union undertook when it agreed to the current structure. The Union accepted the upside of the risk, the Company contends, because it knew the downside would be buffered by the 10.38% red circle rate. The Company argues that in the face of unambiguous contract language, the Union cannot claim there is a past practice of modifying the plan because of a change in product mix.

Findings and Discussion

As both parties recognize, Article 9.B.2 controls the circumstances in which the Company must modify the incentive plan. There have been no mechanical improvements and no changes in equipment. The Union's principal claims in its grievance are that there was a change in quality standards; a change in processing, which presumably alleges a change in manufacturing processes or methods; and a change in the material processed. The record does not support a claim that there was a change in quality standards. There was no evidence that the standards have increased or that new standards have replaced old ones. There was, however, evidence that the Company has added inspectors to facilitate compliance with the standards, and that the additional inspections have increased manhours per ton shipped. The fact that the Company added inspectors, however, does not mean that it increased the standards, or that it had not previously been meeting the standards. Rather, I understood Waterman's testimony to mean that the changes were intended to deal with quality problems immediately, by adding inspectors and by allowing them to stop the line when a defect was discovered, rather than continuing to run defective products. The more apt contention concerning the addition of inspectors to insure

compliance with quality standards is that there was a change in manufacturing processes or methods.

There is no evidence of a change in manufacturing processes. The Company still produces the same products in the same way. It has not changed the actual processes of rolling steel, heat treat, quench and temper, or shipping. It has, however, effected some change in methodology. Thus, rather than inspecting the product at the end of the process, the Company now requires inspections at various points, which are intended to avoid producing defective product. There is no question that the additional inspectors added manhours to the operation. Waterman said some of the increase was offset by a reduction in the rework that would have been required had the Company continued to run defective product. The Union questions that evidence, pointing to a graph that shows the Company has a goal of 24% rework. In June 2016, 35% of the plates required extra processing and in September 2016, the figure was 39%. But the yearly averages do not indicate such a large increase. In 2016, 25.84% of the plates required extra work, which was down from 28% in 2015. Both of these figures were considerably higher than the 18% rework in 2014, but it is not clear from the record whether less rework could be expected on the Trinity product that required substantially fewer manhours to produce. There is nothing in the record about the percentage of rework required in previous years, before the Trinity work. It is difficult to conclude, then, that the additional manhours added for inspectors had no impact in lessening the amount of rework required, which would have offset at least some of the increase in manhours from the additional inspections.

The operation was also changed by giving inspectors the ability to stop the line in the event of a quality problem. As with the increased number of inspectors, Waterman said additional lost time due to this change was partly offset by a reduction in rework that could be

caused by running defective product. Waterman also challenged the Union's claim that there was any significant increase in stoppage time due to the inspectors' ability to stop the line. From 2015 to the time of the hearing, there had been 35 stops totaling just under 600 minutes. But of the 28.5% delay caused by stoppages, only .15% was due to quality shutdowns, some of which would have been offset by reducing rework. Moreover, even if the increased manhours from adding inspectors were taken out, and even if the small increase in downtime were removed, Waterman said the manhours per shipped ton would be nowhere near the change needed for the employees to reach a 20% payout; even a 1% increase would require a reduction of 1000 manhours a week. In these circumstances, I cannot find that any changes due to increased quality inspection manhours or rework contributed to a significant change in the employees' ability to reach 20%.[1]

The Union also argues that there was a change in the materials processed. Much of the Union's case centered on previous occasions when it agreed to changes as a result of various factors, including a change in product mix. Thus, the Union agreed to change the baseline in the plan in 2005 because of the increase in heat treat for military products, which the Union says was a change in the materials processed. In 2011 the parties agreed to change the baseline because of an increase in heat treat, which was labor intensive. In 2013, the Union agreed to change the baseline formula because fewer manhours were required to process the Trinity material. Now that the Company has lost the Trinity business, the Union argues, the incentive plan should be modified to reflect the fact of a different product mix.

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[1]The Union pointed to two other changes. First, it said the Company had modified the process on light gauge products, although it did not specify how that had reduced productivity. Waterman said the purpose of the change was to improve the leveling step, which reduced the manhours needed for additional leveling and handling. Thus, it is not clear that the change had any impact on manhours per ton. The Union also said the Company had changed the way it cut fibers to prevent dents during the leveling process. But Waterman said that did not affect the manhours spent preparing or cutting he fabric, and there is no evidence to the contrary.

The words "materials processed" as used in Article 9.B.1, have often been understood to mean that a plan must be modified when the introduction of a new product or the modification of a current product changes the assumptions on which an existing incentive plan was based. This can be the case, for example, when the size or weight of coils is increased. Although that was not the kind of change at issue in the instant case, the Union has a plausible argument that there has been a change in materials processed. The Company persuaded the Union to modify the plan in 2013, after it got the Trinity business, which accounted for 25% of what the Company produced. The 2010-11 baseline was based on the production of material that did not include Trinity and that was more manhour-intensive than the Trinity work. The result was that the employees could produce the same number of tons with fewer manhours, which resulted in a significant increase in payout. Incentive plans typically cannot be modified merely because the employees work hard enough to exceed the 20% goal. But after the influx of Trinity business, the employees could exceed 20% because of a change in the hours needed to produce the product. It could be fair to conclude, then, that there was a difference in the materials processed that adversely affected the Company. By 2015, the Company had lost the Trinity business, but it was still operating under a baseline that had been specifically modified to account for the fact that Trinity was 25% of the business. It was calculating incentive payments on a baseline that was adopted to account for a type of product the Company no longer produced.

The Company argues that this was merely a reduction in demand for its products and, it says a change in volume due to market forces is not a change in materials processed, citing Chairman Garrett's opinion in USS Case No. USC-1890: "changed market condition which

adversely affect incentive earnings do not in themselves provide basis for adjustment in an incentive." Garrett also addressed market conditions in USC-580; 581, a case in which the Company had made a significant change in manufacturing processes that justified modification of the incentive plan. In the discussion, Garrett noted there had been fluctuations in line speed in the past because of such things as market conditions, customer requirements, and an attempt to achieve better results. He then observed, "Earnings fluctuations related to such conditions are not unusual in the operation of incentives, and in themselves do not require adjustment or revision of exiting incentives…." The instant case was not a mere market fluctuation, in which demand for the product might reasonably be expected to rebound. Nevertheless, it is true that there was a reduction in the demand for the Company's product, in part because Trinity stopped buying material produced at the Conshohocken plant. It is also true that the Company has not replaced the Trinity business with other work.

But even if I were to find that the loss of the Trinity business constituted a change in materials processed under Article 9.B.2, that would not solve the case. It is not enough to find such a change; Article 9.B.2 require a showing that the change impacted the earnings opportunity under the plan. Although this is a difficult case, I am not persuaded that any change in materials processed had a significant impact on the employees' ability to earn 20%. Trinity accounted for 25% of the 280,000 tons produced in 2014, or about 70,000 tons. But the Company lost more than the Trinity business in 2015 and 2016. In 2015 production fell to 160,000 tons and the figure was 130,000 tons in 2016. As noted above, the modified plan paid 28% in 2014, but once the Trinity business was lost, it paid only 6.3% in 2015 and 3% in 2016. Waterford testified credibly that he calculated what the payout would have been in 2015 and 2016 if the incentive plan had used the 2010-2011 baseline. According to his calculations, the plan would have paid

only 7.5 % in 2015 and a little more than 3% in 2016, which is about what it paid under the 2013 modified baseline. This indicates that even if the change in baseline because of the Trinity business were removed from the equation, the incentive plan performance would have been about the same. Stated differently, it was not the change in the baseline due to Trinity that accounted for the lower payments in 2015 and 2016, after the Trinity business was lost.

I understand the Union's concern about the plan, which has paid considerably less than 20% for almost three years. But I cannot order the Company to modify the plan solely because the payouts are low. The reasons for a modification are expressed in the Agreement and, given the circumstances of this case, I cannot find that any of the criteria of Article 9.B.2 apply. Thus, I must deny the grievance.

AWARD

The grievance is denied.

Terry A. Bethel

Terry A. Bethel, Arbitrator
October 23, 2017