Award No. 700
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 28-M-44
Appeal No. 1302
Arbitrator: Bert L. Luskin
April 30, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on April 22, 1981. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. T. L. Kinach, Assistant Superintendent, Labor Relations
Mr. R. B. Castle, Senior Representative, Labor Relations
Mr. J. J. Spear, Senior Representative, Labor Relations
Mr. S. Amatulli, General Foreman, Services Section, No. 3 Cold Strip Mill
Mr. P. Crawford, Foreman, Services Section, No. 3 Cold Strip Mill
Mr. R. Jackson, Associate Representative, Labor Relations
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Foreman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Alexander Jacque, Member, Grievance Committee
Mr. Earl Neal, Member, Grievance Committee
Mr. Rudy Schneider, Member, Grievance Committee
Mr. Herman McDaniel, Grievant

BACKGROUND

Herman McDaniel was a labor pool employee in the No. 3 Cold Strip Mill East Department. McDaniel had filed an application to fill vacancies in the No. 4A Roll Shop sequence. McDaniel was scheduled to work the C turn on January 15, 1977. At the start of the shift McDaniel was assigned as a labor pool employee (along with other laborers) to steam clean the inspection line and the coil trim line and to perform other necessary functions customarily performed on a down turn.

Approximately three hours into the turn an employee named Rushing, a hooker working in the No. 4A Roll Shop sequence, was required to leave the plant. Roll Shop Foreman Durbak contacted Senior Turn Foreman Crawford who was McDaniel's immediate supervisor on that shift, and asked Crawford if he could provide him with the services of an available laborer to fill the temporary hooker vacancy created when Rushing had to leave the plant some five hours before the end of the turn. Turn Foreman Crawford informed Roll Shop Foreman Durbak that he had no one available and that he needed the services of all labor pool employees who were then working on that shift and in that area. Foreman Durbak thereupon called out an employee named Diaz who was scheduled on the hooker occupation on the next turn. Diaz reported and worked the hooker occupation for the last four hours of the turn. He then proceeded to work in the occupation on his regularly scheduled shift.

McDaniel was the senior qualified applicant for the sequence. The Company contended that if McDaniel had been "conveniently available," he would have been assigned to fill the vacancy for the remainder of the shift. The Company contended, however, that he was not "conveniently available" and the Company was, therefore, under no contractual obligation to transfer McDaniel into the hooker occupation for the remaining period of the shift in question. The Company conceded that if the vacancy had occurred at the start of the shift, the Company would have considered McDaniel to have been "conveniently available" since it would have been possible to double over a laborer from the B turn to fill the needed compliment of employees to perform the down turn steam cleaning functions on the inspection and coil trim lines. The Company contended that since it had already doubled over one employee to fill out its needs, it could just as easily doubled over a second employee.

The Company contended that since the vacancy occurred three hours into the shift, it would not have been conveniently possible to obtain the services of another laborer to replace McDaniel and the needs of the work that had to be performed on the down turn would not have made it possible to spare the services of McDaniel and to permit him to fill the temporary vacancy for the balance of the turn as a hooker in the Roll Shop sequence. The Company contended that the task to which McDaniel was assigned had to be completed during the turn and McDaniel could not be released from his initial assignment. The Company contended that it had, in fact, complied with the requirements set forth in Article 13, Section 6 (a) of the 1974 Collective Bargaining Agreement and that its position, based upon the applicable facts and circumstances, was consistent with and in accordance with the views expressed by Inland arbitrators who had been called upon to interpret the words "most conveniently available" ever since that language had been incorporated in collective agreements between the parties.

The Company noted that the words "most conveniently available" appearing in the temporary vacancy language are unique to Inland-United Steelworkers of America collective bargaining agreements. The Company contended that its basis for refusing to move McDaniel up to the hooker vacancy was due to "exigencies associated with the prompt start-up of both the inspection and coil trim lines," and its decision in this case did not constitute a violation of Article 13, Sections 1, 3 or 6, of the 1974 Collective Bargaining Agreement.

The Union contended that McDaniel should have been assigned to fill the temporary vacancy in accordance with the contractual language appearing in Article 13, Section 6, since he was working in the labor pool and eligible for immediate movement into the sequence where the vacancy occurred. The Union contended that the words "most conveniently available" become controlling and would justify the Company's action only under circumstances where the applicant is already assigned to a sequential occupation. The Union contended that the words would not become applicable when the applicant is merely assigned to the performance of tasks within the labor pool.

The Union contended that instead of calling out a hooker to fill the hooker vacancy of overtime hours, the Company should have called out a replacement for McDaniel and, upon the arrival of the replacement, McDaniel could then have been permitted to fill the hooker vacancy without in any way interfering with or impairing the Company's operations.

The Union contended that the assignment language is mandatory since it uses the word "shall" in the place and stead of using the permissive word "may" that had appeared in the prior Collective Bargaining Agreement.

The union contended that the exceptions to the application of the temporary transfer language becomes applicable only where the applicant is not a labor pool employee or where the applicant is regularly assigned to a given unit. The Union contended that since McDaniel was a labor pool employee with an application to the sequence in question and was working as a labor pool employee, the Company was contractually required to fill the vacancy by assigning McDaniel to that position instead of calling in an employee from a different shift who regularly worked on the occupation in question.

The issue arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

The provisions of the Agreement cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 13 - SENIORITY

"SECTION 6. FILLING OF VACANCIES AND STEP-BACKS WITHIN A SEQUENCE.

"a. Temporary Vacancies. Temporary vacancies .... shall be filled by the employee on the turn and within the sequence in which such vacancy occurs in accordance with the provisions of this Article, except that,

"(1) Where such vacancy is on the last job in the sequence, and

"(a) is known at the time that schedules are posted to be of at least five (5) days' duration in the payroll week, it shall be filled by the applicant on the turn qualified therefor in accordance with Section 1 of Article 13;

"(b) is known at the time that schedules are posted to be of less than five (5) days' duration, it shall be filled by the applicant on the turn in the labor pool qualified therefor in accordance with Section 1 of Article 13;

"(c) is not known at the time that schedules are posted, it shall be filled by the applicant on the turn who is then working in the labor pool most conveniently available and qualified therefor in accordance with Section 1 of Article 13; or

"(d) if not filled in accordance with (a), (b), or (c) above, it may be filled by the employee on the turn then working in the labor pool group most conveniently available and qualified therefor in accordance with Section 1 of Article 13;"

The basic facts are not in dispute and have been set forth in the background portion of this opinion and award.

The Company contended that Arbitrators Cole and Kelliher have interpreted the words "most conveniently available" and that Arbitrator Cole held in Inland Award No. 332 that the reference to the words "most conveniently available" must be taken to be the parties' recognition of unavailable practical problems that arise in connection with the Company's obligation to schedule adequate forces and its right to operate as efficiently as possible. The Company pointed to the decision of Arbitrator Kelliher in Inland Award No. 535 where he cited Arbitrator Cole's findings in Inland Award No. 420, wherein Arbitrator Kelliher pointed out that even where the senior employee is actually present on the turn, the Company is not required to upgrade him under all circumstances.

Arbitrator Cole in Inland Award No. 420 found that the controlling phrases in the applicable contractual language were "may be filled" and "most conveniently available." He stressed the distinction between the permissive term "may be filled" and the mandatory term "shall be filled." He pointed to the fact that the parties had used the words "shall be filled" in the paragraph which proceeded and the paragraph which followed the applicable provision that he was called upon to interpret and apply. He then concluded that the words "most conveniently available" when coupled with the permissive "may," indicates that the parties intended to leave some area of discretion with management in filling temporary vacancies.

Arbitrator Kelliher in Award No. 535 also stressed and emphasized the controlling phrases to be the words "may be filled" and "most conveniently available." Arbitrator Kelliher also pointed out that the parties intended to leave an area of discretion with management in filling temporary vacancies by using the word "may" in conjunction with the words "most conveniently available."

The word "may" was removed from Article 13, Section 6 (1) (c), in the 1974 Collective Bargaining Agreement and was substituted by the inclusion of the word "shall." It should be noted that the mandatory word "shall" is used in sub-sections (a) and (b) as well as in the applicable provision [sub-section (c)], whereas the word "may" is used in sub-section (d).

The evidence would indicate that it was not convenient for Foreman Crawford to lose the services of McDaniel after three hours into the turn in question. The turn in question (in Crawford's area) was a down turn and Foreman Crawford knew that the Company would utilize that turn of work to perform maintenance work customarily performed on the inspection line and the coil trim line. It would not have been convenient for Foreman Crawford to lose the services of one employee. The fact remains, however, that McDaniel was eligible for the upgrade and he was clearly entitled to that upgrade. The Company had to move him up unless it could have demonstrated the existence of conditions so compelling in nature as to have justified the denial of Foreman Durbak's request for the services of one of the eight labor pool employees who were then working under Foreman Crawford's direction.

The term "shall" must be given different meaning than the term "may." This arbitrator is in complete agreement with the theories expressed by Arbitrators Cole and Kelliher concerning the distinctions between the words "may" and "shall." The parties had compelling reasons for establishing an orderly system and procedure for the filling of temporary vacancies. In certain instances they use the word "may" and in other instances they use the word "shall." In the instances (reference paragraphs 13.21 and 13.22) the word "shall" is not qualified by the term "most conveniently available...." Reference paragraph 13.23 does contain qualifying language and, although the term "most conveniently available" could have reference to the geographic location where the employee may be working, the fact remains that there would have to be a compelling reason present before the mandatory word "shall" can be qualified by the application of the term "conveniently available."

Although McDaniel's services were necessary to Foreman Crawford, the evidence will not support a conclusion or finding that the loss of McDaniel's services for the last four or five hours of the turn in question would have resulted in an operational delay that would have justified Foreman Crawford's refusal to allow McDaniel to fill the hooker's job for Foreman Durbak. At the very least, before Foreman Crawford should have denied McDaniel the opportunity to go to the hooker job, some reasonable attempt should have been made by Foreman Crawford to obtain a replacement. It would have made very little difference whether Foreman Durbak made an attempt to call in an employee to fill the vacancy or whether Foreman Crawford should have made that attempt. The fact remains that Foreman Crawford was unwilling to take the time necessary to try to bring in a laborer for the last four or five hours of the shift and, as a result,

Foreman Durbak called in a hooker who was scheduled on the following turn to fill the vacancy for the last four hours of the turn in question. Foreman Crawford took the position that it was not convenient for him to make the effort and it was more convenient for him to hold McDaniel to his original shift assignment. He thereby denied McDaniel an opportunity to go to the hooker job for which McDaniel was qualified and eligible by reason of his application.

Under the circumstances present in this case the arbitrator must find that the reasons for McDaniel's retention for the balance of the turn were not so compelling in nature as to have justified Foreman Crawford's refusal to allow McDaniel to fill the vacancy on the grounds that McDaniel was not "conveniently avaiable."

For the reasons hereinabove set forth the arbitrator must find that, under the circumstances that are present on January 15, 1977, (C turn), the grievant was improperly denied the opportunity to fill the temporary vacancy of hooker in the No. 4A Roll Shop sequence for a period of approximately four hours on that turn.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 700

Grievance No. 28-M-44

The grievance of Herman McDaniel is sustained.

/s/ Bert L. Luskin

ARBITRATOR

April 30, 1981