Award No. 719
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERCA
AND ITS LOCAL UNION 1010
Grievance No. 19-N-31
Appeal No. 1323
Arbitrator: Bert L. Luskin
June 28, 1982

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 19, 1982. Pre-hearing briefs were submitted on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. R. H. Ayres, Manager, Labor Relations
Mr. J. Herlihy, Manager, Industrial Engineering Services (Retired)
Mr. K. Hohhof, Superintendent, Industrial Engineering
Mr. M. O. Oliver, Senior Representative, Labor Relations
For the Union:
Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Phil King, Griever
Mr. Mike Mezo, Griever
Mr. Tom Formoso, Assistant Griever

BACKGROUND

The Field Forces Department provides manpower, equipment and field engineering to carry out improvements, replacement and repair work throughout the Company's Indiana Harbor Works. The bargaining unit work force consists of employees from the Labor Department and shop craft employees from among the Machine, Pipe, Carpenter, Rigger, Boiler, Mobile Equipment and Wire Shops. The work originates on the basis of work orders issued by the Engineering Department and the individual Production Departments. The work assigned to the Field Forces Department includes major rehabilitation or modernization of steel making facilities, replacement of mill machinery, and the relining of blast furnaces. The work can range from repairing ore vessels to rebuilding rolling mills. The Field Forces Department employees can be assigned to perform installation of conduit and wiring, repairs or replacement of building structures, and realignment of mill machinery. They are called out in the event of breakdowns or emergencies involving repairs to powerlines, re-welding crane runway girders, repairs to oil lines or repairs to motor room equipment.

In 1977 the parties entered into negotiations that led to the execution of the August 1, 1977, Local Settlement Agreement. One of the issues resolved between the parties in that Settlement Agreement was the issue concerning the incentive plan applicable for the Field Forces Department bargaining unit employees. The parties agreed to the incorporation of certain language relating to the incentive plan in issue. The Agreement provided in part that wage incentive plans which resulted in incentive margins of less than ten percent for the period of October 1, 1976, through May 21, 1977, would be adjusted in accordance with a predetermined formula. Because of weather related problems, the parties agreed to exclude from those computations incentive earnings for the period between January 2, 1977, and February 26, 1977. It was agreed that adjustments necessary "to assure incentive earnings level of twelve percent upon the applicable incentive calculation rate effective September 4, 1977, would be made." It further provided that in order "to determine whether or not the adjustment meets the criteria, ...the adjusted incentives shall be tested against the reference period." The reference period would include the period from October 1, 1976, through May 21, 1977, excluding the period between January 2, 1977, and February 26, 1977.

The Company did make the required adjustments for the period set forth in the Settlement Agreement and those adjustments resulted in a factor increase of thirty-eight percent. With certain exceptions the adjustments resulted in actual incentive earnings of twelve percent or more for the covered craft employees

for a period of approximately one and a half years. When incentive earnings began to decrease to levels below twelve percent, a grievance was filed contending that the Company had violated the Collective Bargaining Agreement when it failed to assure incentive earnings of twelve percent for the agrieved employees. The grievance requested that the Company "assure an incentive earnings level of twelve percent" for the covered employees and to pay all moneys lost due to the violation.

The Company contended that it had met all of the requirements of the 1977 Local Settlement Agreement, and the Company contended that it had not, at any time, provided the covered employees with a guarantee of incentive earnings of twelve percent for each and every pay period. The Company contended that for the entire period between the completion of the adjustments and the pay period immediately preceding the arbitration hearing, the incentive earnings paid to the covered employees averaged 12.2 percent (pay periods commencing September 24, 1977, and ending April 3, 1982).

The Union contended that it does not raise an issue concerning any alleged inadequacy in the agreed-upon incentive plan; nor did the Union contend that the Company had in any way violated any contractual procedure relating to the administration of the plan or any contractual procedures required for the implementation of the plan. The Union contended that the single basic issue in this proceeding concerns itself with the contention of the Union that the contractual language appearing in the 1977 Local Settlement Agreement contains language which must be interpreted to mean that the twelve percent figure is a guarantee for each and every pay period. The Union contended that for any pay period where the earnings fall below twelve percent, the Company is required to pay the twelve percent guaranteed by the Local Settlement Agreement.

The Company contended that the Union has relied upon the first sentence of paragraph 1) a) of the Local Settlement Agreement and has completely disregarded the second sentence thereof. The Company contended that it was required to make the necessary adjustments and it met that requirement. The Company contended that when the adjustments were prepared and submitted to the Union for its consideration, the Union accepted those adjustments which included a thirty-eight percent factor increase. The Company contended that the factor increase did, in fact, result in providing incentive earnings levels of at least twelve percent above the applicable incentive calculation rate effective September 4, 1977. The Company contended that the words "to assure an incentive earnings level of twelve percent" required the Company to make the necessary adjustments that would be necessary in order to "assure" the level of twelve percent. The Company contended, however, that the parties did not, at any time, reach any agreement which would have served to constitute a twelve percent floor or any guarantee that the twelve percent would be paid for each and every pay period even in instances where incentive earnings levels fell below the twelve percent figure.

The grievance filed on behalf of all the covered craft employees was thereafter processed through the remaining steps of the grievance procedure, and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

That part of the provisions of the 1977 Local Settlement Agreement cited by the parties as applicable in the instant dispute is hereinabove set forth as follows:

"1. Wage incentive plans which have resulted in an incentive margin of less than 10.0% for the period of October 1, 1976 (exclusive of the period of January 2, 1977 to February 26, 1977) through May 21, 1977 will be adjusted as follows:

"a) For trade, craft and maintenance jobs, there will be adjustments to assure an incentive earnings level of 12.0% above the applicable incentive calculation rate effective September 4, 1977. To determine whether or not the adjustment meets the criteria of the foregoing sentence, the adjusted incentives shall be tested against the reference period."

For a period of some eighteen months preceding the 1977 Local Settlement Agreement, incentive earnings for the group in question had ranged from 8 percent per pay period to a high of 9.4 percent. The average for all of the pay periods between October 9, 1976, and May 21, 1977, was 8.7 percent.

The parties agreed that there was a need to adjust the incentive plan in a manner which would provide for average incentive earnings substantially in excess of those which had been earned by the covered employees for a significant period of time. The Union negotiators insisted, however, that a suggested incentive earnings level of 12 percent should be a "guaranteed" earnings level. It was the position of the Union that in any pay period where incentive earnings for the covered employees fell below 12 percent, the Company should be required to pay the 12 percent irrespective of what the earnings might have been in preceding pay periods and irrespective of what the incentive earnings might be in succeeding pay periods.

The Company at all times refused to consider the concept of a guaranteed form of incentive earnings, and an impasse developed that continued up to a point where strike deadlines were being set in the event the issue was not resolved.

In the latter stages of negotiations on local issues, the Union was represented by its Committee and was assisted by the District Director. The Union also obtained the services of Ben Fisher, an Assistant to the President of the International Union. The evidence concerning the discussions that preceded the agreement and execution of the 1977 Local Settlement Agreement is not in substantial dispute. There is uncontradicted testimony in the record that at one stage of the discussions concerning the incentive guarantee sought by the Union, Mr. Fisher informed the Union negotiators that the concept of "guaranteed" incentive earnings had never become a part of any agreement in any of the negotiations conducted by a local union or the International Union covering agreements with the company members of any coordinating steel company. The Company took the position that, although thousands of incentive plans had been structured and established, not one single plan had ever made provision for guaranteed incentive earnings. It was the Company position that the guarantee of incentive earnings would defeat the very purpose for which incentive plans were developed. Union negotiators continued to insist upon a guarantee, and the issue was finally resolved when Mr. Fisher prepared a proposal, offered that proposal to the Company for its consideration and informed the Company that the Union would accept that proposal. The proposal offered by the Union was, in fact, accepted by the Company, and was adopted by the parties and incorporated in the 1977 Local Settlement Agreement.

The dispute in this case centers around the meaning to be attributed to the words "to assure an incentive earnings level of 12.0 percent above the applicable incentive calculation rate effective September 4, 1977." The Union interprets that sentence to mean that the words "to assure" must be given the same meaning as the words "to guarantee." The Company's basic contention is that the meaning of the words "to assure" becomes readily evident when the paragraph is read as a whole to include the first and second sentence thereof. The Company contended that the Union has attempted to rely on only the first sentence and has refused to give meaning to the second sentence of the paragraph in question.

The original position adopted by Mr. Fisher during the course of negotiations is eminently sound and is based upon an historical application of the concept of incentive plans. Incentive plans are designed to provide covered employees with additional earnings opportunities based upon the application of incentive effort. The amount of incentive effort is always measured by a fundamental standard. There are many variations of that concept which need not be further developed in this opinion.

The Union is quite correct when it argues that under certain circumstances the word "assure" can be given a literal meaning which would equate the word with the word "guarantee." That, however, is not the manner in which the words "to assure" were used in the paragraph of the 1977 Local Settlement Agreement that is in issue in this case. As a fundamental basis of contract construction, one word in a provision cannot be controlling when it becomes evident that the word is qualified by the rest of the sentence or is qualified by language appearing in the remaining portion of the provision. The meaning that the negotiators attributed to the words "to assure" becomes clear when the second sentence is read in conjuction with the first sentence. In essence, the parties agreed to make adjustments to the indexes that would provide for incentive earnings levels of 12 percent above the applicable incentive calculation rate. In order to achieve that result, the parties established the procedure that would have to be followed by the inclusion of the second sentence of the paragraph in question. In other words, in order to "assure" an incentive earnings level of 12 percent, the parties agreed that since the plan in question had generated incentive margins of less than 10 percent over a fixed period of time, such a plan would be adjusted in order "to assure" incentive earnings levels of 12 percent. The parties agreed to use the indexes for the period between October 1, 1976, and May 21, 1977 (excluding the period between January 2, 1977, and February 26, 1977) as the determining period for incentive calculation adjustments.

The Company complied with the second sentence of the paragraph in question when it thereafter made an upward adjustment of the index of 8.7 percent that had been achieved during the reference period by 38 percent. When the adjustments were computed they measured out to precisely the 12 percent that the Company was required to achieve in the modification of the rates in question.

The Union accepted those calculations and the plan became operative based upon the increases placed into effect by the Company. The calculations proved to be remarkably accurate since the incentive earnings levels thereafter in the vast majority of pay periods reached the level of 12 percent (or higher) which the modified plan was designed to achieve in order to "assure" the 12 percent earnings level. An exhibit submitted by the Company disclosed the fact that in the 72 pay periods between September, 1977, through

July 26, 1980, the covered employees had averaged a 12.6 percent incentive margin. In 55 of the 72 pay periods, the covered employees averaged 12 percent (or higher), while in the remaining 17 pay periods the average fell below 12 percent. There were several pay periods prior to the filing of the grievance in this case when earnings fell below 12 percent but no grievance was filed complaining of that fact.

The statistical data submitted by the Company indicated that earnings began to fall below the 12 percent level in a substantial number of pay periods between July, 1980, and December, 1980. For a number of pay periods thereafter the incentive earnings were substantially in excess of 12 percent, and commencing in October, 1981, earnings levels again began to fall. The Company equates the drop in incentive earnings to decreases in productivity caused by substantial decreases in the level of Company operations. Decreases in operations will inevitably effect incentive earnings. The fact that employees had no control over the productivity levels would have no basic bearing on the issue in this case. It is sufficient to note for the purpose of determining whether the 38 percent increase in factor levels served to achieve the 12 percent earnings levels target that was to be "assured" as a result of the proposed changes. It becomes readily evident that the changes instituted by the Company and accepted by the Union did serve to "assure" incentive earnings levels of 12 percent. For a period of 113 pay periods between September 11, 1977, and April 3, 1982, the index of incentive earnings was 12.2 percent and that period included substantial periods of Company operations that were at a relatively high level as well as substantial periods of Company operations that had substantially decreased because of economic conditions over which neither the Company nor the covered employees had any control.

In substance, the arbitrator must find that the words "to assure an incentive earnings level of 12 percent" has reference to the requirement that factor adjustments would have to be made in order to achieve that result. In order to determine whether the adjustments would, in fact, "assure an incentive earnings level of 12 percent ....", the Company was required to make the necessary adjustments using the precise periods of time agreed to by the parties for comparison purposes. The paragraph in question consists of two sentences. An interpretation cannot be placed upon the meaning of the words in the first sentence without giving consideration to the qualifying language appearing in the second sentence of the same paragraph.

The arbitrator must, therefore, find that the plan adopted by the Company subsequent to the agreement reached in the 1977 Local Settlement Agreement did, in fact, comply with and conform to the requirements of that Settlement Agreement. The Company was not contractually required to provide covered employees with a guarantee of 12 percent incentive earnings for each and every pay period without regard to the levels of productivity generated by the covered employees.

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

AWARD NO. 719

Grievance No. 19-N-31

The grievance is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

June 28, 1982