Award No. 789
Opinion and Award
In the Matter of Arbitration Between
Inland Steel Company
- and -
United Steelworkers of America
Local Union 1010
Grievance No. 23-S-17
Appeal No. 1400
Arbitrator: Herbert Fishgold
October 14, 1988
Appearances:
For the Company
R. Vela, Section Manager-Union Relations
Bernie Mascey, Section Manager, Temper & Finishing-No. 3 Cold Strip West Finishing Products
Vince Soto, Project Representative, Union Relations
For the Union
J. Robinson, Arbitration Coordinator, Local 1010
M. Meso, President
W. Trella, Staff Representative
J. Cuevas, Grievant
T. Zaborski, Griever
T. Hargrove, Griever
Statement of the Grievance
Management violated the Collective Bargaining Agreement by scheduling a younger employee to work 40 hours as Asst. Roller. Grievant employees' seniority rights were violated on the week of 1/4/87 - B Turn. Management scheduled grievant 32 hours.
Relief Sought
Pay all monies lost and cease [sic] of this practice.
Contract Provisions Cited
The United cites the Company with alleged violations of Article 2, Section 2; Article 3, Section 2; Article 4, Section 4 and Article 13, Sections 1, 3, 4 and 6, of the Collective Bargaining Agreement.
Statement of the Award
The grievance is denied.
The grievant, J. Cuevas is established as a Roller Assistant Temp. 28 in the Temper Mill Sequence of the No. 3 Cold Strip Mill West Department. During the week of Januay 4, 1987, the employees of that sequence were scheduled on a reduced level of operations. Twenty-three employees were scheduled, with nineteen receiving four days of work and the other four employees receiving five days of work.
Among those who were scheduled for five days of work as opposed to four days was G. Tobias, whose plant seniority was less than that of the Grievant. Tobias has a plant date of August 27, 1958, while the grievant has plant seniority from August 11, 1952. Mr. Tobias is established as a Roller Temp. 27, a sequential step higher than the Grievant. However, for the relevant week, he was scheduled as a Roller Assistant. The other three employees who received five days were scheduled on the top job in the sequence - Rollers - where they held standing.
As a result of the scheduling during the week of January 4, 1987, this grievance was filed by the Union alleging that scheduling Mr. Cuevas to only four turns of work as a Roller Assistant while an employee junior in plantwide seniority to him was scheduled for five turns of work as a Roller Assistant, constituted a violation of Article 13, Sections 1, 2, 3, 4 and 6 of the August 1, 1986 Collective Bargaining Agreement (hereafter "CBA"). The Company contended that its scheduling complied with the applicable provisions of the CBA.
The grievance was thereafter processed through the remaining steps of the grievance procedure and the issue arising therefrom became the subject of this arbitration proceeding.
DISCUSSION
The provisions of the Agreement cited by the parties as directly applicable in the instant dispute are set forth as follows:
ARTICLE 13 - Seniority

13.45 Section 9. Force and Crew Reductions. When it becomes necessary to reduce operations, the procedures set forth in paragraphs "a" and "b" shall be followed, unless otherwise mutually agreed between the manager of the department and the grievance committeeman of the Union for the area involved:
13.41.1 Noncontinuous Operations and Continuous Operations.
13.46 (1) Sequential occupations (multiple occupation sequences)
13.47 a. In reducing operations within a sequence or portion of a sequence, except where the department manager elects to schedule on a fixed-crew basis, employees shall be scheduled for not less than thirty-two (32) hours per week until four (4) consecutive weeks have been worked. Beginning in the fifth consecutive week, employees in such sequences shall be displaced in order to schedule the remaining employees in a sequence for not less than fourth (40) hours per week; it being understood, however, that such scheduling shall not require the Company to schedule overtime.
13.54.1 b. Noncontinuous and Continuous Operations - Labor Pool.
13.55 Employees in the labor pool shall be laid off in accordance with their plant length of service.
13.56 Nothing in this Section 9 shall be construed to guarantee any individual employee any number of hours of work in a week or as determining the size of the crews to be scheduled.
13.56.1 Demotions and other reductions in forces shall be made in descending job sequence order starting with the highest affected job and with the employee on such job having the least length least length of plant continuous service.
The Company argued that, based on its knowledge of the situation at the time that the reduction in operation schedule was put into effect, it was only required by Article 13, Section 9 (1)(a) to schedule sequentially established employees not less than thirty-two hours per week. Because the Grievant was scheduled for thirty-two hours, the Company had met its obligation to him.
The Company considered that the issue of this grievance was identical to that raised in Grievance No. 17-P-3, which was the subject of Inland Award 707, in which scheduling of junior employees within the sequence to fifth turns while more senior employees were only scheduled to four turns in the same workweek, was upheld by Arbitrator Luskin. The Company argued, based on the principle of res judicata, that the Arbitrator herein lacks jurisdiction to adjudicate the instant grievance because it involves the same issue, contractual provisions and facts and, therefore, is bound by the earlier arbitral decision.
The Company defined the issue ruled on in Award 707 as the manner in which a fifth turn is allocated to sequentially established employees during periods of reduced operations. The Company believes that the Arbitrator in this matter is confronted with the same question.
The thrust of the Union's position is that, in the past, during an extended period of reduced operations, the Company had applied a regular rotation for the fifth day. However, in the instant case, no rotation was used, although the Company claimed that it intended to do so if the reduced operations continued, According to the Union, this approach violated the requirements of Article 13, Section 6 dealing with temporary vacancies. The Union also alleged that the Company's action violated Article 13, Sections 1, 2, 3 and by failing to schedule the 5th turn to the employee with the greater continuous service.
As noted, at the outset the Company argues that the Arbitrator lacks jurisdiction to adjudicate the issue presented in the instant grievance, since the same issue had been resolved between the parties in the Inland Award 707 under an identical factual pattern and under the same controlling contractual language. In support of that position, the Company notes that both grievances involve the manner in which a 5th turn is allocated to sequentially established employees during periods of reduced operations. In Award 707, Arbitrator Luskin ruled that the Company properly scheduled the additional turns during reduced operations and that such allocation of the 5th turn without regard to plant continuous service was not unusual. Thus, the Company argues that the principle of res judicata applies.
With regard to this arbitrability argument, the Arbitrator believes that the Company's reliance on the concept of res judicata is misplaced. As set forth in Elkouri & Elkouri, How Arbitration Works, BNA, 4th Ed., 1985, pp. 421-422:
Giving authoritative force to prior awards when the same issue subsequently arises (stare decisis) is to be distinguished from refusing to permit the merits of the same event or incident to be relitigated (res judicata). Where a new incident gives rise to the same issue that is covered by a prior award, the new incident may be taken to arbitration but it may be controlled by the prior award. The destiny of a party's claim thus may be governed by a prior award which either precludes the claim under res judicata concepts or controls the decision on the claim by stare decisis concepts. In some instances arbitrators likewise have made the prior award the governing factor by application of a third judicial concept, collateral estoppel, which stands somewhere between the concepts of res judicata and stare decisis (collateral estoppel allows

overlaps somewhat with res judicata and, in a sense, with the authoritative precedent area of stare decisis). However, regardless of whether the arbitrator speaks in terms of res judicata, collateral estoppel, or stare decisis, ordinarily the prior award by some procedure will have been the governing factor in the disposition of the present claim. [Footnote omitted]

In order, then, to determine whether, and to what degree, Award 707 is dispositive, it is first necessary to consider what Award 707 held, and how it applies to the grievance at hand. Gr. 17-P-3, which was the subject of Award 707, involved the work sharing provisions of Article 13, Section 9-a-(1)(b) of the 1980 Collective Bargaining Agreement. During the first week of reduced operations, after scheduling all sequential employees for 32 hours, the Company allocated four additional terms on a rotating basis. The four employees with the highest sequential standing in the sequence, which included Melton, the grievant, were scheduled to receive 40 hours. The following week, the same procedure was followed, with the necessary four additional terms being filled by the next lower down four employees in order of standing. The succeeding weeks of reduced operations were scheduled on a similar rotation basis. The Union challenged the schedule during the second week, whereby an employee with less seniority than Melton and with no standing in the higher sequenced classification in which Melton worked, was scheduled to work 40 hours that week when Melton was scheduled for only 32 hours.

In upholding the Company's position in Award 707, Arbitrator Luskin noted:

The work sharing concept is not new. It has been followed and applied under varying sets of facts and circumstances for many years. It is permissive under the terms and provisions of this Collective Bargaining Agreement and the procedure followed by the Company in this instance has been followed in other instances where special departmental agreements have not been applicable. Arbitrators at Inland have held that the application of the work sharing concept permitted by the Contract would extend to the filling of additional turns that are available to be filled by employees within the sequence. The filling of those turns has not necessarily been limited to employees within a sequence who have achieved standing within a job classification where extra turns of work became available and must be scheduled.

The procedure followed by the Company in this case is not unusual. The employee who was scheduled for an additional turn in the week of August 10, 1980, had less seniority than did Melton, but he was a member of the sequence and he would be eligible for scheduling under the work sharing concept on any position within the sequence which he could fill, even though he had not achieved standing in the classification in which the additional turns became available….

The Union acknowledges that, based upon Award 707, in a work sharing situation, the Company's scheduling on a rotational basis would be appropriate. However, the Union disputes the applicability of work sharing under Section 9 to be applicable herein. In support of this position, the Union notes that the reduced operations in fact only lasted one week, thereby precluding any work sharing arrangement to occur. According to the Union, if you do not know how long reduced operations will last, you must "rotate" the first week strictly by seniority, rather than by allocating the extra turns to the highest ranking employees in the sequence, regardless of plant seniority. The Union further argues that Article 13, Sections 1 and 6, as well as prior Inland Awards defining job security in terms of a 40 hour workweek, require that seniority merit consideration when the opportunity to work a 40 hour workweek is at stake.

The parties placed the entire record underlying Award 707 in evidence herein, and it is clear, upon reading the transcript and brief, that all of the seniority arguments relating to Article 13, Sections 1, 3, 4, and 6 were raised before Arbitrator Luskin. In Award 707, Arbitrator Luskin specifically stated that he "...has analyzed all of those provisions and the contentions advanced by the parties in support of their respective positions, and ... must conclude that [they] do not bear directly on the issue in this case." [pg. 5]

The Arbitrator herein must come to the same conclusion. The preamble to Section 9 specifically states that:

13.45 Section 9. Force and Crew Reductions. When it becomes necessary to reduce operations, the procedures set forth in paragraphs "a" and "b" shall be followed, unless otherwise mutually agreed between the manager of the department and the grievance committeeman of the Union for the area involved:

M.p. 13.47(a) provides only one scheduling requirement in reduced operations situations - - that all employees in the sequence be scheduled for not less than 32 hours per week. That was done here.

The Arbitrator does not find persuasive the Union's argument that the Article 13, Section 9(a) work sharing rotational scheduling is not applicable because the reduced operations only lasted one week. In the first instance, it was stipulated that the Company would not know if reduced operations would continue until the middle of the week of January 4, 1987. Further, it was stipulated that the Company intended to begin rotation of the fifth day if reduced operations continued. Finally, Section 9(a) provides for the scheduling

requirement "until four (4) consecutive weeks have been worked," thereby allowing that reduced operations may exist for less or for more than that period of time.

Turning next to the scheduling procedure utilized by the Company for the week in question, in reviewing the cases upholding work sharing, it appears that in all instances, the Company has allocated the initial extra turns in the first week to the employees with the highest sequential standing. That was done here. As to the subsequent rotational scheduling of extra turns, the cases have further recognized that such allocation does not depend on whether the employee in the sequence is junior in continuous sequence or has achieved standing in the classification in which the additional turn became available. Here, unlike the situation in Award 707, the junior employee had a higher sequential standing than did the grievant.

While it may be that in the vast majority of situations, the sequential standing and the seniority of the employees involved in the first week and/or subsequent weeks were comparative, the Arbitrator can find nothing in the Agreement that requires a finding that unless, as here, four highest employees in the sequence are also the four oldest in seniority, they cannot be allocated the extra turns in the first week. In this regard, nothing in the Agreement or prior Inland awards mandates that the Company distribute additional available turns strictly by seniority after everyone eligible to be scheduled in sequence has been scheduled a 32 hours level in a period of reduced operations.

Notwithstanding the above, the Arbitrator, while finding that this form of scheduling did not violate any provision of the 1986 Collective Bargaining Agreement, also must agree with Arbitrator Luskin that the Company could have followed the procedure suggested by the Union herein - to wit, to schedule the oldest employees in the sequence to the extra turns in the first week of the reduced operations irregardless of their sequential standing, so long as they are capable of filling the position in question, and then rotate according to sequential standing in any subsequent weeks of reduced operations, until the requirements of Section 9(a) were satisfied. Either procedure, in effect, would be permissible under the terms and provisions of the Agreement.

However, to the extent that the Union seeks to achieve its argued-for position, the Arbitrator would echo the concluding observation of Arbitrator Luskin in Award 707:

If the Union believes that the principle of seniority should be extended so as to cover the situation involved in this case, it must accomplish that result be means of agreement between the parties that would provide the senior employees with the added turns of work."

Accordingly, for all the reasons set forth above, the Arbitrator is of the opinion that the procedure followed by the Company in this case did not constitute a violation of any provision of the Collective Bargaining Agreement.

AWARD

The grievance is denied.

/s/ Herbert Fishgold

Herbert Fishgold

Arbitrator

Washington, D.C.

October 14, 1988