Supplemental Arbitration Award No. 813
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Supplemental Proceeding in Award No. 813
Arbitrator: Clare B. McDermott
Opinion and Award
April 19, 1990
Subject: Company Claim That Use of Other Equipment Would Excuse Its Transferring Switching Work to Another Sequence Under Prior Award.
Agreement Provisions Involved: Articles 2 and 13 of the August 1, 1989 Agreement.
Statement of the Award: The Company's request is denied.
Chronology:
Heard: 1-31-90
Award Issued by Telephone: 2-01-90
Appearances
Company
Robert Castle -- Manager, Union Relations
Robert Cayia -- Section Manager, Union Relations
Bill Krill -- Senior Wage Analyst, Industrial Engineering
Terry Mulligan -- Supervisor CCM Ship Facility, 80" Hot Strip Mill
Union
Jim Robinson -- Arbitration Coordinator
Jose Piru -- Grvr. - Tran.
Tom Hargrove -- Griever 80" H.S.
BACKGROUND
In 1989 the Company began establishing at the Harbor Works a new coil-preparation and shipping operation to prepare and send coils to I/N Tek in New Carlisle, Indiana. It proposed that all necessary preparation and shipping operations be done by a new, grand job, established, described, and classified on the basis of a "skill based" principle, to be placed in a new seniority sequence, by itself.
The Union challenged that on the ground that various of the duties proposed for the job would have to be taken from existing jobs in established seniority sequences. It argued that those jobs had a right under Article 13, Section 3, and Article 2, Section 2(c) to resist transfer of their ordinary duties across seniority-sequence lines.
There were several areas of dispute there. The December 1, 1989 Opinion, issued in explanation of the October 25, 1989 Award, held that employees in the Switching Seniority Sequence of Transportation had a protected right under the Agreement to continue to perform the locomotive operation and switching duties, if they were to be done in the new operation by a standard gauge, remote-control, locomotive, and that employees in the Trackmobile Seniority Sequence in the 80" Mill would have a protected right to do that switching, if it were to be done by a new Trackmobile, which the Company said it would buy for that purpose at a cost of $350,000. The Company effort in that argument was to be in position to contend that, if a Trackmobile were bought and used, employees in the Transportation Department Switching Seniority Sequence could not claim that switching work. The Award held, if a Trackmobile were to be used, that employees in the Trackmobile Seniority Sequence would have the right to operate it on that switching work.
In the Company's effort in that proceeding to defeat the showing of reasonably complete exclusivity of the Article 13-Article 2 practice, essential to the Union case, the Company noted that a Plymouth engine had been operating in the ingot-Buggy Shop to haul ingot-mold cars in and out of that Shop for repairs. That was referred to, among other situations, as showing that employees from the Switching Sequence in Transportation had not done switching throughout the plant on an exclusive basis.
The Union pointed out in reply, however, that the Plymouth, although a standard-gauge, did not have a full-size, standard-gauge engine. It is smaller, narrower, and the record in the first proceeding suggests it has

perhaps one-half the power of a 1200-horsepower standard-gauge engine. That distinction was relied upon in the Award in deciding that use of the Plymouth engine at the Ingot-Buggy Shop was not such a similar event as reasonably could upset the exclusivity of switching done by employees in the Switching Sequence of Transportation.

The new coil-preparation and shipping facility is now ready for production operations. Thus, at the scheduled January-1990 arbitration sitting, the Company initiated this Supplemental Proceeding in Award No. 813. The Company says it moved thus expeditiously because it realized this opportunity only in late January, tested the Plymouth engine then, and needed an expeditious answer to its question.

An Award denying the Company's Supplemental Petition was telephoned to the parties on February 1. Following their receipt of that Award the parties engaged in negotiations looking toward settlement of this problem, and they advised the Arbitrator to hold up issuance of the Opinion explaining that Award. They recently notified him that he should issue this Opinion.

On a kind of emergency or expedited basis, the Company proposed that the Plymouth engine then was available for use in performing these switching duties, to be operated by employees in the Trackmobile Sequence, which thus would eliminate necessity to spend $350,000 for a new trackmobile. The Company argues that analysis of the Opinion in the original proceeding shows that the practice arising from a combination of seniority principles under Article 13 and local working condition doctrine under Article 2, running to the protection of employees was based on the kind of tool used to do the switching, either a standard-gauge locomotive (Switching Sequence employees) or a trackmobile (Trackmobile Sequence employees). That was said to have been shown by various statements in the original Opinion. Thus, the Company insists that the seniority-practice finding was not based on the activity of switching, standing alone. It says the seniority-practice was tool and location specific.

With that as the major premise in the Opinion's reasoning, as the Company sees it, it then argues that the Plymouth engine is a third kind of tool to be used for this switching and that it is significantly different from a standard-gauge engine and thus its use by Trackmobile employees to do this switching would not invade any seniority-unit-local working condition rights of employees in the Switching Sequence in Transportation. Switching Sequence employees never have used the Plymouth engine. The Company thus argues that this would be use of a different tool in a new location.

Apparently two employees per turn would be required for this switching work, whether done by Transportation Switching Sequence employees or by Trackmobile employees.

The Company has two fears which motivated the present proceeding. As argued in the original case, it says that, if the essential switching for this new operation were to be done by employees from the Switching Sequence in Transportation, either or both of two serious problems would arise. The first is that the standard-gauge engine from Transportation could not be used reliably on a call or standby basis with any assurance because its getting from its Transportation home to the site of this coil-preparation area on the tight time schedule required could not be depended upon since it often would be blocked by other operations and by other rail and road traffic on and about these congested tracks. The second problem would be that, if the engine and Switching Sequence employees should be kept at the coil-preparation area in order to avoid the first problem, then they would experience a lot--perhaps 60 percent--of dead time when there would be no switching going on and, since they are Switching Sequence employees, they would be unable (prohibited) from performing other useful coil-preparation work.

Management says both problems would be avoided if the Plymouth engine were used and operated by Trackmobile Sequence employees. They would be assigned to the site with the Plymouth engine and, because of hopes for a potential local agreement combining the Trackmobile Seniority Sequence with one in the 80" Mill, the Trackmobile Operators could perform useful work when not actually switching, thus avoiding the dead time. Use of the Plymouth would avoid also the necessity to spend $350,000 for a new trackmobile. The Company says use of the Plymouth engine by Trackmobile Sequence employees would not hurt Switching Sequence employees, who would not be laid off or suffer any reduced hours.

This Company proposal was accompanied by an offer to stipulate that this proposed use of the Plymouth engine, operated by employees in the Trackmobile Sequence, would be without precedent or prejudice to the rights of Transportation employees in any future disputes on this subject.

The Union replies that this is a Company attempt to use an oddball engine in order to escape its obligations to Switching Sequence employees in Transportation. The Union then argues, however, that the Plymouth, "oddball" though it characterizes it, is an engine and that it runs on tracks. It says that the issue then is whether use of a less powerful engine can undo the seniority-local working condition rights of Switching Sequence employees in Transportation. It says if the Company argument should prevail here, it fears that

all seniority-local working condition protection of employees could be destroyed by any meaningless technological change.

Moreover, notes the Union, although size was the only basis on which the Plymouth was distinguished in the original proceeding, it says that was because that was the main distinguishing point that was available then. The Union stresses, however, that nothing done by this Plymouth at the Ingot-Buggy Repair Shop could be relevant here or could have been relevant in the original proceeding for the further and more important reason that it was operated there by Mechanics who did the ingot-car repairs and that in operating it their purpose was to act simply as "hostlers" in order to get bad cars into the Shop to be repaired and to get repaired cars out. Nothing was hauled in those cars then and thus that was not a production operation.

The Union is not persuaded, either, that the impracticability or inefficiency urged by the Company, if Switching Sequence employees were used here with a standard-gauge engine, would be so great as the Company states it. The Union believes that Management is sufficiently creative to overcome those exaggerated disadvantages and here is selling itself short, perhaps by design.

The Union suggests in addition that use of this Plymouth engine by No. 2 BOF employees for about ten months in 1986 is not relevant here because that arrangement, too, was rather a sport, in that that arrangement arose, or at least was perceived to have arisen, as part of a "deal" by which No. 2 BOF employees would run the Plymouth and Transportation employees would not object, in return for their receiving 70/80 pensions. The parties here agree that was the perception then but now can find no supporting documentary or testimonial evidence for that.

The Union notes also that use of the Plymouth engine at No. 2 BOF was consistent with the tradition by which all Steel Shops have done their own switching within their limited areas.

FINDINGS

In saying that the Plymouth engine now is available, the Company does not mean that any objective facts have changed, as if it was not available before and during processing of the original dispute in October of 1989 and later and that it simply became available recently. It means only that it did not think of this until January of 1990. The Plymouth was available for this use at all pertinent times in the past. Thus, there is nothing genuinely newly discovered about this argument that in a very real sense seeks to go behind the original Award.

The problems of practicability and efficiency stressed by the Company are significant, even if they might be ameliorated to some degree by creative Management action, as is the necessity for expenditure of $350,000 if a trackmobile is to be used.

But, as the parties are forever reminding the Arbitrator, he is to follow the Agreement and not to impose his personal predilections as to what might be fair, just, and reasonable. The Company says that all it is asking for here is a practical solution.

That may be, but the strictures of Articles 13 and 2 appear to be too clear and blunt to be parried by this thirteenth hour entrance of a less powerful, standard-gauge engine. Its use at the Ingot-Buggy Shop by maintenance employees for hostling, not production, purposes was so grossly different for purposes of the original issue that it could have furnished no relevant help to the Company position there. And use of the Plymouth by No. 2 BOF employees for a time in 1986 is so clouded in the uncertainty about possible existence of a special arrangement, that it, too, cannot help Management here.

An interesting and curious fact is that the parties' positions here on this Plymouth engine are directly reversed from what they had been in the original proceeding. The Company there necessarily meant that the Plymouth engine was sufficiently similar to a standard-gauge engine and that its use and history were so relevant to this switching operation that it could negate the exclusivity of switching by Switching Sequence employees being argued there by the Union. Similarly, the Union there necessarily was saying that the Plymouth was significantly different from a standard-gauge engine, so that, whatever its use, it could not destroy its exclusivity argument.

Here, the Company is arguing expressly in the other direction, that is, that the Plymouth engine really is substantially different from a standard-gauge engine, in size, appearance, and history of use, while the Union now is contending that the Plymouth is just one more, ordinary, tracked engine, except that it is smaller. To an extent, the Arbitrator will be equally guilty of that shifting.

Even so, however, on balance, it appears that in the first proceeding limited use of the significantly smaller Plymouth was not sufficient to undo the Union's exclusivity arguments. It was in operation for too short a time and was doing essentially different things. Moreover, it is not so different in its nature as a piece of tracked equipment, to be used now as the basis for having this switching done outside the binding limits of a seniority-practice created by routine use of standard-gauge engines to do this kind of work. The

Plymouth's posture in the first proceeding was too insignificant seriously to undermine the Union's exclusivity evidence, and it is too similar to a standard-gauge engine to serve here as a new or third kind of motorized device. Thus, use of the Plymouth would not excuse transferring this switching from the Switching Sequence employees in Transportation, and the Company's request must be denied.

AWARD

The Company's request is denied.

/s/ Clare B. McDermott
Clare B. McDermott
Arbitrator

Inland Steel Award No. 813

This case was published in Steel Arbitration as [26 Steel Arb. 19,741]

LOCAL WORKING CONDITIONS AND SENIORITY

AWARD NO. 813

SUMMARY: Whether or not the proposed Coil Preparation Operator job is a "new" job, the Company may not place switching duties and crane-operating tasks in the proposed job because the switching duties in the plant have been performed almost exclusively by the Switching Sequence in the Transportation Department and EOT cranes have always been operated by the Crane Sequence in the 80" Mill Department. Loading requirements of the proposed job must stay with the Loader Shipping Sequence in the 80" Mill Department. Under the seniority and local working conditions provisions of the Contract, existing promotional sequences must remain in effect for the life of the Agreement unless changed by mutual agreement in writing, and if a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity, such work may not be transferred across seniority-sequence lines.

COMPANY: INLAND STEEL CO.
PLANT: INDIANA HARBOR
DISTRICT: 31
ARBITRATOR: CLARE B. McDERMOTT
DATE OF DECISION: DECEMBER 1, 1989

BACKGROUND

This proceeding presents an anticipatory challenge, under Articles 2, 9, and 13 of the August 1, 1989 Agreement, to the Company's intentions in organizing and manning a new coil-preparation and shipping facility at the 80" Hot Strip Mill. This Opinion is issued in explanation of the Award sent to the parties by telegram on October 25, 1989.

An existing coil-preparation and shipping facility is in operation at the 80", but because of reduced customer demand it now is cut back to five turns a week, and its future might be clouded by the very work in question here. It prepares and ships hot-band coils to various customers.

The Company is involved in a joint venture with Nippon Kokan Steel Company, called I/N Tek, to erect and operate a new five-hundred-million-dollar continuous cold mill in New Carlisle, Indiana, not far from South Bend. It will process, initially, one million tons a year, with plans to move later to 1.6 million tons. The new preparation and shipping function at the Harbor Works in East Chicago will supply a stream of coils for the I/N Tek continuous cold mill.

Preparation and shipping of coils to any destination and for any purpose requires that they be brought to the area from the mill, unloaded, stored, prepared, reloaded, and shipped. Those functions for the existing hot-band business have coils coming to the preparation and shipping area on a conveyor, going through the processing line, and being shipped. That requires a crane to lift coils off the conveyor and put them on the floor for storage. Ross Carriers bring coils from the coil-handling building, and the Loader gives the lineup for the coil order and by marking information on top of coils. The crane lifts and feeds coils in the lineup order to the processing line and finally lifts them in that order to a conveyor line which takes them for

loading and shipping. The existing operation for preparation and shipping hot-band coils thus requires conveyors, Ross Carriers, crane service, and loading functions. That operation uses a Loader, at Job Class 11, Loader Helper, Job Class 6, Utilityman, Job Class 5, Crane Operator (two employees), Job Class 8, and a Trackmobile Operator at Job Class 8.

The proposed operation is being put in the existing coil-handling building, but its facilities and operations, though right beside the old area, will be kept separate from it. The new coil-storage area will hold nearly 1600 coils, where they will sit for a 48-hour cooling period. Because the new continuous cold mill at New Carlisle will have no coil-storage field, it will receive coils on a "just in time" basis, requiring that coils come to it shortly before use, so that the rail cars will hold that mill's entire inventory, and coils must be shipped and received there in the exact mill-processing order. The Company suggests that the proper figure to use in describing and understanding these trains is that they be thought of as one long conveyor line from the Harbor Works to New Carlisle. The New Carlisle operation has space for only two cars at a time inside its building.

Unit trains of 36 cars will come to New Carlisle every 24 hours, carrying 125 to 175 coils. The rail trip will take from two to three hours. The cars are being built by Conrail and will be "dedicated" solely to this coil-shipping function for I/N Tek.

Coils will be loaded for shipment at the Harbor Works during a 12-hour period each day, with the other 12 hours devoted to receiving, handling, and processing coils. Coil grabs, rather than C-Hooks will be used by the cranes, the advantage being that more coils can be stored in a smaller space when coil grabs are used.

The new operation will employ a three-man crew, all incumbents of one, grand job of Coil Preparation Operator I, with a rate of Job Class 13, a II rate of Job Class 11, and a III rate of Job Class 9. The proposed job, says the Company, has been conceived and described preliminarily on the basis of what is called a "skill based" principle, which is touted here as the job principle of the 21st century. That differs from a single purpose job, in that the duties performed by any of the intended three incumbents will vary from turn to turn and within a turn. Management says the incumbents will rotate from time to time through all the different tasks.

The Company notes that each of the three incumbents will perform at one time or another within a turn all duties now done by the five existing jobs, plus some new ones not done before by any of those jobs. That is, the new job will perform loading, loading-helper, utility, crane, and trackmobile duties, requiring it to load, stock, inspect, band, weigh, burn, operate cranes (EOT and gantry), operate a remote-control, standard-gauge, switching locomotive, switch, couple, uncouple, and recover and transmit data by CRT terminals, including one in the crane cab.

The Company says the important skills required by the proposed job will be ability to read and write English, some basic mathematics, use of a CRT, as well as possession of a mobile operating license for crane and remote-control locomotive operation, and inspection, banding, and burning ability.

Significant changes in the physical layout of the area were required. Construction is going on now, and the facility is meant to begin operations experimentally early in the first quarter of 1990 and to begin actual coil preparation and shipping later in that quarter. The Company calls this bundle of duties a new job and intends to place it in a new, separate seniority unit by itself.

Since not all elements of this proposed facility are in existence, much of which is still in the early stages of construction, and with the "new" job not in being yet, Management had discussions with the Union to explain its plans in advance, as foreseen by Article 13, Section 22. The parties thus have attempted to reach agreement on how this new operation will be staffed and in what seniority unit or units but have not succeeded in that. Accordingly, in order to avoid the disruption and frustrations that would follow for both parties if Management should go ahead and man the operation according to its view, which would be followed by Union objections, which, if they were sustained in arbitration, would require the parties to turn around and march in an entirely different direction, they decided to process this dispute before its actual occurrence and to have it resolved in advance in arbitration under paragraph 13.119. Hence, this joint request for what amounts to a kind of declaratory judgment in arbitration.

The Union argues (1) that the new bundle of duties do not constitute a new job under Article 9, Section 6-c but really are just a changed and improper combination of several existing jobs, the remote-control switching now done in the switching sequence by the Radio Control Operator, Conductor, and Switchman in the Switching Sequence of the Transportation Department, and the Shipping Craneman in the Crane Sequence of the 80" Department; (2) that the crane-operation and remote-control locomotive switching duties cannot be transferred across seniority sequence lines from the Switching Sequence in Transportation and the Crane Sequence in the 80", without violation of Article 13, Section 3; (3) that the coil-preparation

duties are, indeed, new ones which, under the standards of 13, Sections 1 and 3 must be placed in the existing Loader Shipping Sequence of the 80" Department; and (4) it asks, should it be concluded here that this bundle of duties is a new job and properly may contain all tasks Management would put in it, into what seniority unit should it be placed under the standards of Article 13, Sections 1 and 3.

The Company would add a fifth potential issue. It says that, if it were to be decided that moving coils by use of the standard-gauge, remote-control locomotive and its associated functions was an improper transfer of switching duties across seniority unit lines, it then would buy an additional trackmobile at a cost of $350,000 for use in moving the coils, as opposed to the $20.35 per-hour cost of using its own remote-control locomotive. That would avoid the competition between the switching work by remote-control locomotive operating in the Company's proposed new seniority sequence and the existing switching duties done by like equipment and functions in the Switching Sequence of the Transportation Department. The Company notes that, should it do that, the Union has made it clear that it then would make the identical seniority-unit argument, but in that event on behalf of the Trackmobile Operator job in the Trackmobile Sequence of the 80" Department. Thus, the Company requests decision here of that potential issue, as well.

On the first question, whether this really is a new job, the Company would stress all the new construction, new equipment, new organization, installation of CRTs and computers in the cranes, and new and much more stringent quality requirements demanded by I/N Tek, which will require tighter inspection and standards at this facility. Management notes that in the existing preparation and shipping operation, a nonbargaining unit person (nonexempt salaried) does the coil inspection, whereas this job will assume all inspection duties in the new operation. The Company points out also that banding and burning will have to be done by this job. It stresses that training for this job will have to make all incumbents capable of performing all of the duties listed above, which will be, therefore, considerably beyond and different from the training required for each of the single-purpose jobs working in the existing operation. It says that six to eight weeks of classroom training will be required, in addition to necessary on-the-job training.

The Company would take comfort on the "new" job issue from the cyclical nature of the proposed duties, meaning that over a 24-hour, three-turn period each of the three incumbents might have to perform each of the many duties stated above and that some of them would not be performed for several hours, up to 12, but that Job Class 13 nevertheless will be paid to all incumbents during that 12-hour period.

On the "new" job issue, the Company stresses its insistence that the job will require considerable decision making and problem solving with little or no close supervision, allegedly different from the existing coil-preparation and shipping jobs. It says participative management will be employed here, with supervisors on days but no direct supervision on back turns.

From all that the Company insists that this will be a new job for description and classification purposes of Article 9, Section 6-c.

The parties have cited various arbitration awards from this and other bargaining relationships on the "new-job-changed-job" issue.

Union evidence by present incumbents of crane and switching jobs in the other seniority sequences said that those jobs perform essentially the same basic duties as will be required of the crane and switching phases of the proposed job.

The Company would deflect that by stressing the computer duties added to this crane operation, which make it responsible in part for maintaining coil inventory and keeping a computer record of that. No such duty is required of current Crane Operators.

The second issue is whether the switching and crane-operation tasks may be put in this proposed job, under Article 13, Section 3, as aided by Article 2, Section 2-c, in light of the fact that switching traditionally has been done by the Switching Sequence in Transportation and crane operation by the Crane Sequence in the 80".

The Union asserts that the Switching Sequence jobs in Transportation always have performed switching operations throughout the plant. It claims that the only significant exception is that the steel shops long have performed their own switching on their tracks. It then relies upon the statement in Article 9, Section 6-b that a job description and classification then in effect shall continue in effect unless Management changes the job content so as to change the job classification, the job is terminated, or the description and classification are changed by mutual agreement. It notes that none of those events have occurred and says, therefore, that the Switching Sequence jobs and Crane Sequence jobs continue to exist, and it argues they must perform these switching and crane duties, also because of Article 13, paragraph 13.11 and Article 2, Section 2-c. The argument is the traditional one that notes Article 13, Section 3's saying that the existing sequence diagrams shall remain in effect for the life of the Agreement unless changed by mutual

agreement. Coupled with that is said to be the Article 2, Section 2-c benefit of the local working condition of assigning switching to the Switching Sequence and crane operation to the Crane Sequence. That alleged assignment practice cannot be changed or eliminated, says the Union, without an adequate change of basis or without mutual agreement. The Union says neither is present here.

It agrees some switching is done by jobs outside the Switching Sequence in Transportation, but it notes that the Plymouth engine at the Ingot-Buggy Shop is not a regular, standard-gauge engine; that switching at #4 Slabber is done only in the basement of that building; and that the switching involved in car-dumping at 11 Battery simply was not contested when it was taken over there by 11 Battery jobs.

Those situations are said to be so different and so few that they could not destroy the consistency of the local working condition in aid of the seniority protection of Switching Sequence employees in Transportation.

The Union argues similarly regarding seniority protection of the Crane Sequence jobs. It contends that presence of a computer in the crane to aid in keeping accurate coil inventory cannot change any of this because that allegedly is an incidental function of the crane responsibility and should not be seen as affecting its primary function of operating a crane to lift and move coils. In any event, the Union says that the new or improved technology of a computer cannot be used to disrupt employees' seniority rights and to allow the Company to restructure all seniority units in a department.

The Company stresses the switching done by 11 Battery employees as a sufficient exception to a claim for these switching duties by the Transportation Department's Switching Sequence jobs, since it allegedly shows that that sequence did not do all plant switching, exclusively. The Company notes also that some areas, 4 BOF, 3 Mold Yard, 3 Cold Strip East and West, and the old 80" operation had department employees doing switching, even though it was by use of a trackmobile.

Even if there were such a seniority local working condition, however, the Company argues that this is a new facility, where it would be impracticable to apply such jurisdictional rules, especially since, as it urges, this new operation will have no impact on the Switching Sequence because it will lose no jobs. On the ground of practicality, the Company stresses that Transportation employees follow a "pick" system, and the relevant Company witness said Transportation could not guarantee the quick service required by the tight shipping requirements of the new facility. It allegedly could not do that on either a standby or an on-call basis. Since switching apparently will be required for about one-quarter of one of the three turns, would be almost nonexistent on one other turn, and would cover only approximately 12 percent of the third turn, further impracticability would be created by putting it in the Switching Sequence for there would be long periods with no productive work to be done.

As to crane-operating tasks, the Company argues that the purpose of #62 crane in the existing operation is different from what it will be here. There it feeds conveyors that feed processing or shipping by and from other areas, whereas the crane here will supply coils directly to processing and to cars for shipment, without conveyor lines to intervene. It is said, moreover, that the computer on the crane will make this a radically different job from the older crane operation without a computer.

Aside from the potential trackmobile issue, the third question is, if all these duties properly may be included in one job, in what seniority unit should it be placed, under the factors of Article 13. Sections 1 and 3. As a contingent and cautionary matter, the parties made arguments on each relevant factor, but the details need not be set out here.

FINDINGS<FN 1>

Whether or not this is a new job or several changed ones need not detain us long. Putting aside the unique position of trade or craft jobs and the seniority claims arising under Article 13, the Company, under Article 9, Section 6-b and -c, may create new jobs, terminate existing ones, and move duties from one job to another, always assuming, of course, that the proper description and classification results, if any, are taken care of, Accordingly, if Article 9, Section 6 were the only pertinent provision here, there would be no bar to the Company's putting these duties in this proposed job. Position rated jobs have no right to claim that past assignment of duties to them requires that such duties always be assigned there, and there are no local working condition principles arising from Article 2, Section 2 to change that conclusion in these circumstances. Thus, if job description and classification principles of Article 9, Section 6, with or without Article 2, Section 2, were the only contractual arguments here, there would be nothing in the way of the Company's putting all these duties in one job and treating it as a new one. That need not be decided, however, for it would not resolve this problem.

The dispositive issue is whether the Company's attempt to place switching duties (including, of course, remote-control locomotive operation, coupling, and uncoupling of cars) and crane-operating tasks in the

proposed job would violate, not Article 9, Section 6, but the Article 13, Section 3 seniority-unit rights, as aided by Article 2, Section 2 principles, of employees in the Switching Sequence of Transportation and of employees in the Crane Sequence of the 80".

By the language of Article 13, Section 3, paragraph 13.11, the parties have agreed that existing promotional sequence diagrams shall remain in effect for the life of the Agreement unless changed by mutual agreement in writing. That has not occurred here. That language must have been intended to carry some meaningful protection for jobs in given seniority sequences, less than plant wide. If so, and it has pretty generally been read that way, if a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity, then concepts of paragraph 13.11 and local working condition principles of Article 2, Section 2 require that such work not be transferred across seniority-sequence lines.

In disputes of this kind, the Union argues exclusive or nearly exclusive performance of the work by a given sequence, jurisdiction, protection of seniority, and alleged similarities between the old work and that in question. The Company then relies upon alleged gaps in exclusive performance of the work by the claiming sequence, efficiency, absence of threats to seniority, and alleged differences between the old work and that in question. And each cites decisions goring the other's ox. The parties have done all that here.

Without analyzing each detail in those arguments, largely because the record is long and complex, it must be concluded that, although there are some exceptions to the claim of exclusivity for the Switching Sequence in the Transportation Department, the evidence is reasonably sufficient to establish that it is the proper repository of switching duties in this plant, because the parties have so administered them. The situation at 11 Battery is the only real exception because the only case where above-ground switching for a department with a standard-gauge engine is done by department employees and not by the Switching-Sequence in Transportation. On balance, that is not such a departure as to destroy the claim of the Switching Sequence to this work.

The situation as to crane operation is cleaner and clearer. There are no exceptions to the Crane Sequence's operating EOT cranes in this department. Introduction of the computer and the greater responsibility for building and accurately maintaining the CRT record of coil inventory are not such significant new duties as to warrant calling this a new job for seniority-sequence purposes of Article 13.

Accordingly, the switching duties must be assigned to employees on jobs in the Switching Sequence in Transportation, and the crane operation, with its attendant added tasks, must be assigned to employees on jobs in the 80" Crane Sequence.

The Company would resist that by arguments of impracticability and inefficiency but, for purposes of this precise issue, they have no roots in Article 13. It perhaps should be stated outright that this is not yet a matter for administration of the factors of Article 13, Sections 1 and 3, where it is necessary to decide which of several competing seniority sequences, including, perhaps, a new one, is better qualified to have some new work, not done in any sequence before. In that case, "practicable," and efficiency by way of "practicable," if they differ in any significant degree, surely are entitled to serious consideration. Article 13, Section 3 says so. It says that certain considerations are to be provided for "insofar as practicable" and a specific factor is to be an objective "insofar as possible."

But this is not yet that more fluid problem, such as was dealt with in the Supplemental Proceeding in CO EX 15, and in Award 814, the latter also decided today. This is a claim by three seniority sequences that each has done certain kinds of work, to the extent that, because seniority sequences are to remain in effect unless changed by mutual agreement, they are entitled to additional work of that kind for seniority and local working condition reasons, not because it would be more appropriate under the factors, but because the question no longer is an open one. The parties having had that work performed by a given sequence over the years, it has the right to claim more of that kind of work, regardless of where it might be placed under all the factors if the placement question were a new one or even one that still were open to argument. The Switching and Crane Sequences here really are arguing that at sometime in the past the parties must have thought they were the appropriate ones for this switching and crane work since they put those duties there. Accordingly, they need not compete for them again, as if it were a new problem, with all other existing sequences or with a new one, since the parties closed that question by their pertinent behavior in placement of the work in the past in light of the contractual language.

The same analysis requires, of course, that the loading duties of the proposed job stay with the Loader Shipping Sequence in the 80" Department.

Since the standard-gauge, engine-switching work cannot be put in the proposed job in a separate sequence, the Company requests a ruling on whether that would charge were it to buy a trackmobile and have this switching done with that equipment.

The answer must be that it would not, since switching by trackmobile in this 80" area already has been assigned for years to the Trackmobile Operator job in the Trackmobile Sequence. True, there are other department areas where switching by trackmobile is or was done by department employees. Three of those areas abandoned the trackmobile and went to use of a standard-gauge engine, and the work then was assigned to the Switching Sequence in Transportation, as above. None of that undercuts the above conclusion, however, especially in light of the hard fact that trackmobile switching already is done in this department by the Trackmobile Operator. Accordingly, Management's going to use of a trackmobile for switching in the new operation would not authorize its having all duties or even the trackmobile switching of the proposed job done by a new, separate seniority sequence. The Trackmobile Sequence in this Department would have a superior 13-3 and 2-2 claim to that work.

In light of this resolution of these problems, it will not be necessary to decide which sequence, including the Company's proposed new one, would have the better claim under the factors of Article 13, Sections 1 and 3, if this were one, new job.

The proposed Coil Preparation Operator I may not be treated properly as one, new job, because transferring the switching work (including operation of a remote-control, standard-gauge locomotive, switching, coupling, and uncoupling) across seniority-sequence lines from the existing Switching Sequence in the Transportation Department to a new sequence would violate Article 13, Section 3.

A similar ruling would be required if the Company were to acquire a trackmobile to do this switching work. In that case, transferring this switching work by trackmobile across seniority-sequence lines from the existing Trackmobile Sequence in the 80" Mill Department to a new sequence would violate Article 13, Section 3.

The same reasons would prohibit transferring this crane operation across seniority-sequence lines from the existing Crane Sequence in the 80" Mill Department to a new sequence.

Application of the factors of Article 13, Sections 1 and 3 requires that the remaining duties of the proposed job, if to be done by bargaining unit jobs, including preparing, loading, stocking, banding, burning, weighing, and inspecting, be placed in the existing Loader Shipping Sequence in the 80" Mill Department.

AWARD

The dispute is resolved as stated in the last five paragraphs of the accompanying Opinion.

<FN 1>[For text of Article 13, Sections 1 and 3, see footnote on page 19,739, above--ED.]