Award No. 829
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 22-S-4
Appeal No. 1440
Terry A. Bethel, Arb.
June 12, 1990
OPINION AND AWARD
Introduction
The hearing in this case was held at the company offices in East Chicago, Indiana on May 15, 1990. Both side filed prehearing briefs. Grievant David Hunter was present throughout the hearing and testified in his own behalf.
Appearances
For the Company
P. Parker, Project Representative
R. Cayia, Section Manager, Union Relations
J. Mayberry, Section Manager, Mold Foundry
J. Polihronis, Planner, Mold Foundry
L. Edgington, Supervisor, Mold Foundry
R. Vela, Section Manager, Union Relations
For the Union
J. Robinson, Arbitration Coordinator
D. Devreese, Griever
A. Paquin, Asst. Griever
D. Hunter, Grievant
Ron Siwy
Madison Benton
Ray Martinez
Background
This case involves the layoff of grievant, David Hunter, from his position in the mobile equipment sequence in the mold foundry. The layoff was effective from March 2, 1986 until November 2, 1986, when he was recalled. The grievance was filed on October 14, 1986, therefore putting in issue the period extending from 30 days prior to the grievance until the date of recall. The gist of the complaint is grievant's and the union's assertion that, because work was available in his occupation during the period of layoff, such work having been performed by employees not established in the mobile equipment sequence, grievant should have been recalled from layoff and scheduled to work. The union seeks a make whole remedy for the period at issue.
Grievant was not the only employee laid off from the mold foundry, or stepped back out of sequence to the labor pool, during the period at issue. He was, however, the only mobile equipment operator so affected. As I understand the facts, there are 5 employees established in the sequence. The other 4 maintained their positions during the period of reduced operations. Grievant did not have sufficient plant seniority to maintain a position in the labor pool and, accordingly, was laid off on March 2, 1986.
Although the mold foundry was in a period of reduced operations, the company continued to have need for the services of mobile equipment operators. As noted, the other 4 employees in the sequence were scheduled to work. In addition, it is not disputed that there was at least some additional work that was performed either by employees assigned from the labor pool or by employees already on the shift and assigned to other sequences. The extent of this additional work is a matter of dispute between the parties. When additional employees were needed, the company filled the positions through the temporary vacancy provisions of the contract, found in Article 13, section 6. I need not repeat here all the language found in that section. Marginal paragraph 13.19.1 deals with the situation in which the company knows of a temporary vacancy of at least 5 days duration at the time schedules are posted, on Thursday preceding the work week in question. In that event, the vacancy is to be filled by an employees within the sequence, by an employee stepped back out of the sequence, or by a qualified applicant recalled from layoff.

Temporary vacancies known to be of less than 5 days duration (or of unknown duration) are treated differently. They are to be filled:

by an employee on the turn and within the sequence in which such vacancy occurs . . . and where such vacancy is on the lowest job in the sequence shall be filled in accordance with section 10 of article 13 by the employee on the turn in the labor pool with standing in the sequence involved stepped back out of the sequence or, if none, by the applicant on the turn in the labor pool qualified therefore. . . .

In addition, the company sometimes relied on marginal paragraph 13.19.4, which deals with scheduling when an employee is absent from a scheduled turn. In that event, the vacancy is filled by an employee on the turn within the sequence and, if the vacancy is in the lowest job, by an employee in the sequence stepped back to the labor pool or, if none (which was the case here) "by the applicant most conveniently available then working in the labor pool and qualified. . . ."

Also relevant is marginal paragraphs 13.28, which says that job vacancies within a sequence "created after a schedule has been posted because additional work has become available shall be considered as temporary vacancies . . ." and goes on to provide for the placement of employees called out or held over because the vacancy cannot be filled by employees on the turn.

Finally, the company relies on mp 13.88.7 and on article 13, section 9, mp 13.47, and a letter of agreement interpreting that section. MP 13.88.7 provides, in part:

An employee laid off from his parent department will not be recalled for vacancies in his parent department unless no one (including temporarily assigned employees) in the parent department is qualified and available to fill such vacancies, except that, a sequentially established employee shall be recalled to his sequence to fill vacancies of at least one week's duration if such an employee is not currently working in the plant.

MP 13.47 provides that in layoff situations, employees are to be scheduled "for not less than 32 consecutive hours until four consecutive weeks have been worked" after which employees are to be scheduled for 40 hours. In a letter dated September 12, 1985, the parties agreed as follows:

In the event a sequential employee is scheduled for less than thirty-two hours in his sequence . . . such employee may be scheduled in the labor pool in order to receive a minimum of 32 hours. . . . The parties further agreed that any such employee who is scheduled on a non-vulnerable job in a sequence for at least three turns during a payroll week shall not be subject to be bumped. However, an employee who is scheduled on a non-vulnerable job in a sequence for less than three turns during a payroll week shall be subject to be bumped. . . .

The labor pool jobs are vulnerable. Company witnesses testified that it was not possible to schedule grievant for three days or more in his occupation in the mobile equipment sequence -- a non vulnerable job -- because at the time the schedule was prepared, supervision could not anticipate the amount of work available.

Company witness Rene Vela testified at great length about the effect of all these provisions. His testified that the company filled vacancies during grievant's layoff principally through mp 13.19.2, which deals with temporary vacancies of less than 5 days or unknown duration, and through 13.19.4, which deals with temporary vacancies created by absence. His testimony was that grievant had no recall rights under these provisions, and that the vacancies were to be filled by qualified employees on the turn, in accordance with the contract and previous practice.

The company claims that the mobile equipment work performed during grievant's layoff by employees not in that sequence was di minimis. The work occurred, the company says, only intermittently, was ordinarily of brief duration, and was typically available when other employees in the sequence were otherwise occupied. The company also claims that it was not unusual even before the layoff for employees in other sequences to operate mobile equipment for brief periods of time, either because operators were unavailable or because the employees took the work upon themselves to assist their own operations.

The union denies that there was much mobile equipment work performed by non-sequential employees prior to the layoff and, while there may indeed have been some, the union has the better part of the argument here. Although there is no dispute that some such work occurred before the layoff, I am persuaded from listening to company witnesses that it was infrequent and insignificant in amount.

The union also asserts that there was more than a di minimis amount of mobile equipment work performed by non-sequential employees during the 1986 layoff. It introduced the testimony of several mold foundry employees who claimed to have observed sustained and regular mobile equipment work performed by employees in other sequences.

There is no dispute that there was some work available for a mobile equipment operator during the period grievant was on layoff. There were, of course, mobile equipment operators assigned to the mold foundry on each shift it operated. Nevertheless, there were periods when there was more work to be done than the assigned employees could handle. In some instances, that may have been because mobile equipment employees reported off sick. But there also appear to have been occasions when the assigned employees could not perform all of the work to be done.

I think it may be the case that union witnesses overstated somewhat the quantity of work being performed by non-sequential employees. I do not mean to suggest that they lied. To the contrary, I was impressed by the effort made by witness from both sides to tell what they could remember without exaggeration. It has, however, been four years since the events giving rise to this arbitration. Moreover, as union representative Robinson aptly pointed out, the employees here are not clerks. Each of them was assigned to other work and at the hearing they were merely trying to relate what they remembered from several years ago.

Even so, I am persuaded from their testimony that the mobile equipment operation by non-sequential employees was not quite as isolated or inconsequential as the company witnesses remember. I'm confident that there were occasions when the need for additional work was unplanned and surprising, but I don't think that captures all the occasions on which it was necessary. Indeed, I understood the testimony of James Mayberry, section manager of the mold foundry, to mean that he knew there would be times during the layoff when he would need additional mobile equipment work. However, I also believed his testimony that he did not know when the need would arise, that he could not plan for it, and that the total need was not substantial and did not approach 32 hours a week.

Discussion

At the hearing, the parties acknowledged that they each viewed the facts of this case through a different telescope. The union sees this as a seniority case, and it is concerned that by allowing employees from other sequences to perform work belonging to the mobile equipment sequence, it will, in effect, whittle away the jobs. In that regard, it cites American Bridge Division -- Unites States Steel Corp. Gr. No. A-58-3, in which the company had taken work away from one classification and assigned it to an employee in another sequence.

Although the company views the case differently, I think its dispute with the union is somewhat narrower than the union believes. That is, the company has not asserted the right to remove job duties from employees in the mobile equipment sequence and assign them to other sequences. Nor, in my view, has the company done that. As revealed in Inland Award 758, the company's ability to take work away from one sequence and simply assign it to another one is limited. But here, the responsibility to operate mobile equipment has neither been deleted from the mobile equipment sequence nor added to the job description of occupations in other sequences. Rather, the company continues to recognize that the work done by other employees during the period grievant was on layoff has consistently been performed by mobile equipment employees and properly belongs in that sequence. The company, however, claims that it had the right to assign the work elsewhere in the limited circumstances of this case.

As I understand the union's case, it wants a ruling that any work that is more than di minimis or incidental can be performed only by employees in the occupations ordinarily assigned to that work. I think the union has proven that the type of work at issue here has been consistently assigned to the mobile equipment sequence, although it appears to be the case that prior to 1986, employees in other sequences occasionally and infrequently performed small amounts of such work.

Nevertheless, even though the union has established that this work "belongs" to the mobile equipment sequence, I find no warrant either for a conclusion that the company has taken the work away from that sequence or for a ruling that the company should have recalled grievant to do the work. The seniority articles to which the union refers do not exist in a vacuum. Rather, they are part of a comprehensive agreement that not only creates promotional sequences but also provides how work performed by those sequences should be assigned. The union has not been able to point to any section of that agreement that would justify recalling grievant in this case.

As I noted earlier, I do not think the company has contested the union's claim that the work at issue is ordinarily performed by employees in the mobile equipment sequence. Rather, the issue it raises is how to assign the work when there is not enough of it to justify assigning an employee to at least a 32 hour week. To that extent, this case differs from Inland Award 758, cited by the union. There the company had reduced a crew by, among other things, assigning hooking work to a different sequence and eliminating one or more hookers from the crew entirely. That does not fairly characterize what the company has done here. In Award 758 the company's action was a threat to the integrity of the sequence, just as was the company's

action in American Bridge Division, supra, where the arbitrator observed that the company's action could whittle away at the occupation.

In this case, however, the company has not taken a portion of a mobile equipment occupation and given it to a different sequence. Rather, it continues to recognize the work as consistently performed by mobile equipment employees and, on the occasions it has assigned it elsewhere, it has paid for it accordingly. Nor has it whittled away at grievant's occupation. In American Bridge, the company eliminated a position because it assigned elsewhere work ordinarily performed in that classification. By contrast, here the company laid off one mobile equipment operator at a time when other employee in the department were also laid off. Moreover, the action was not permanent. Grievant was subsequently recalled and commenced doing the same work he had performed before the layoff.

I am unable to find that the company's action in this case violated any provision of the contract. MP 13.88.7 says unambiguously that employees are not to be recalled from layoff unless no one "including temporarily assigned employees" is available, except when there is a vacancy of at least a week's duration. There is no proof in this case that there was any such vacancy. Although union witnesses remembered significant amounts of available work, I am unable to find that the company could have anticipated the availability of 32 hours work in any week. Indeed, I am unable to find that 32 hours of mobile equipment work actually was performed by non-sequential employees in any week of grievant's layoff. Frankly, it does not make sense to believe that the company would have scheduled unneeded employees in other sequences to perform grievant's work, especially since the company was obligated to pay for it at mobile equipment wages. Perhaps the company might have taken such action if it were trying to transfer the work to another sequence. But it has not done that here, and there is no reason to suspect any such motive.

I find this case to be quite similar to Arbitrator Cole's opinion in Inland Award No. 427. The union contends that the case is not pertinent because there the parties conceded a significant overlap between the two jobs. It is true that the jobs were related and that there was overlap. But I think the basic issue is still the same. Arbitrator Cole was faced with a situation in which more than an incidental amount of work was being performed by employees in a different sequence. He stated the issue as follows:

The essential question here is whether the fact that the company has from time to time used wrappers to do car blockers' work, generally for a period of a few hours only, indicates that there has been a kind of vacancy to fill or any job to which an employee may exercise the right of recall to his sequence."

His answer was as follows:

". . . my impression is that in arriving at several provisions of the contract the parties contemplated a vacancy or an opportunity to be recalled to one's sequence to consist of something more than an occasional and irregular need for a particular kind of services for a few hours at a time.

The arbitrator did refer to the closeness of the occupations, although it is not clear that fact made the question before him easier than the case at issue here. Indeed, the fact that two occupations are closely related makes it more likely that the company might do exactly what Arbitrator Cole expressly said it could not do -- combine the occupations.

I think the basic issues in Award 427 is about the same as the issue here. Arbitrator Cole did not deny the union's grievance because the wrappers were doing their own work. They were, in fact, doing the work of employees in another sequence. Thus, the question in each case is whether the fact that work is being done by non-sequential employees in a situation in which the company knew that at least some such work would be available requires the company to recall a laid off employee in the sequence. Arbitrator Cole said no, noting that language requiring the company to pay the appropriate rate for the work "was designed to cover situations of this kind."

I think this case requires the same answer. The company may have been required to recall grievant had it known sufficiently in advance that a sufficient quantity of work would be available. That issue is not before me. It was not, however, required to recall him in the circumstances of this case. I am convinced that, while the company could anticipate that there would be some need for additional mobile equipment work, it could not predict that there would be at least 32 hours of such work in any week and, in fact, there was not that amount of work performed in any such week. I cannot conclude that a laid off employee is entitled to recall simply because some work in his sequence is available.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

Bloomington, IN

June 12, 1990