Award No. 874
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
April 24 1993
OPINION AND AWARD
Introduction
This case concerns the union's claim that the mechanical equipment sequence at no. 7 blast furnace had established the exclusive right to operate C crane in the mason building. The case was tried at the company's offices in East Chicago, Indiana on February 19, 1993. Jim Robinson represented the union and Pat Parker presented the company's case. Both sides filed pre-hearing briefs and submitted the case on final argument.
Appearances
For the company:
P. Parker -- Project Rep., Union Relations
W. Price -- Supervisor, Mason Dept.
D. Rosenow -- Section Mgr., No. 7 Blast Furnace
P. Ladd -- Human Resources Generalist
P. Mullarkey -- CMA Planner, No. 2 BOF/CC
J. Avita -- Planning Supervisor, No. 7 B. Furn.
R. DeRosa -- Section Mgr., Industrial Engineering
B. Smith -- Arbitration Coordinator, Union Rel.
For the union:
J. Robinson -- Chrm., Grievance Committee
A. Jacque -- 1st Vice Chrm., Grievance Committee
L. Micou -- Griever
C. Davis -- Asst. Griever
T. Sanders -- Steward
R. Church
E. Bircher
J. Chenault
R. Brown
B. Cole
F. Calderon
Background
The mason building is part of the no. 7 blast furnace department. The primary work accomplished in the building is the casting of trough covers, tilting runner covers and slag runner covers, all of which are essential to the operation of the blast furnace. Jesse Avita, the raw materials supervisor of the department, characterized the work performed in the mason building as maintenance work. He said the work load is not constant, but depends on the activity of the furnace. Initially, employees were scheduled in the mason building around the clock. Over the years, the manning requirements have been reduced, in principal part because of the change from brick covers to cast covers.
The position at issue in this case is the tractor operator who had been assigned to the mason building. The tractor operator was part of the no. 7 blast furnace mobile equipment sequence. When the company stopped scheduling that position, it had been assigned only on day turn and its function was to operate a tractor to unload trucks and to operate a large pendant controlled crane in the mason building. In addition to the change in refractory material, Avita testified that there were other changes which increased the life of the trough covers, and thus reduced the work load of the mason building. In addition, because fewer covers were repaired and the need for raw material was reduced accordingly, there were fewer trucks to unload. Thus, in January 1990, the company stopped scheduling a tractor operator in the mason building. It continues to schedule the occupation in other areas of the blast furnace.
There is no dispute that among his other duties, the tractor operator operated a large pendant controlled crane in the mason building. The union claims that the tractor operator operated the crane exclusively, or

nearly so, and that employees in the mobile equipment sequence therefore have established the right to this work under the familiar principles set out by Arbitrator McDermott in Inland Award No. 813. Although the company acknowledges that the tractor operator often operated the crane, and while it characterizes the tractor operator as the employee of first choice for that assignment, the company denies that mobile equipment sequence employees have the exclusive right to the work. The company's defense is two-fold. First, it asserts that it is improper to focus so narrowly on one crane in a department that houses many pendant controlled cranes, most of which were not operated by employees from the mobile equipment sequence. Second, the company asserts that employees from other sequences often operated the crane at issue, thus defeating any claim of exclusivity in the mobile equipment sequence.

Although the parties disagree about their proper characterization, there are three cranes in the mason building. The crane at issue is a large capacity crane that covers most of the mason building area. The parties referred to it as crane C. Avita testified that, in addition to tractor operators, he has seen the crane operated by mechanics, masons, labor leaders, and auxiliary repairmen. Most of these employees have the responsibility of crane operation noted in their job descriptions. In addition to crane C, crane A is located in the polishing room. It, too, is pendant controlled and, in recent years, has been seldom used. Crane B is also a small pendant controlled crane which is used by mechanics. Both cranes A and B are located in small rooms, while crane C covers the mason building. The union characterizes cranes A and B as "hoists" and asserts that they should not properly be compared to the operation of crane C.

In addition to cranes A, B and C in the mason building, the company tendered a list of thirty other cranes located in the number 7 blast furnace department. All of the cranes are either pendant or radio controlled and none of them is operated exclusively by the mobile equipment sequence. In fact, most of the cranes are operated by mechanics and, the company asserts, are used as tools in the ordinary job function of the mechanic. The company claims that the same is true of crane C. Buttressing Avita's evidence was the testimony of Patrick Mullarkey, who had supervised a crew of mechanics and welders in the mason building. He testified that various occupations used crane C, including mechanics, masons, labor leaders, labor gang employees, and tractor operators. On cross examination, he estimated that maintenance employees accounted for 15 to 20% of the crane's operation.

The company's last witness was mason supervisor Price. Like the company's other two witnesses, he testified that he had seen crane C operated by labor leaders, masons, mechanics, "electrical people," cable inspectors, and tractor operators. The union questioned the relevance of the evidence about masons because they are not in the bargaining unit represented by Local Union 1010.

The union called several witnesses. Roy Church is a labor leader in the mason building. He testified that before the elimination of the tractor operator his foreman told him that he was permitted to operate crane C, but not for more than 30 minutes a day. The tractor operator operated it the rest of the time. He said that on the 3 to 11 turn when no tractor operator was scheduled, the company would move up a payloader operator (also from the mobile equipment sequence) to operate the crane. Jim Chenault was a tractor operator in the cast house. He testified that on 3 to 11 turn he was sometimes called to the mason building to operate crane C. Bud Cole offered similar testimony. Reggie Brown was a tractor operator in the mason building until the job was eliminated. He testified that when he was at work, no one else operated crane C. He also said that when he was working 3 to 11 in the cast house, he or another mechanical equipment sequence employee would be called to the mason building to operate crane C. Londale Micou, a mechanic, testified that before 1990 if he required a load to be moved by crane C, the tractor operator would operate the crane.

The union's most important witness -- indeed, the most important witness in the hearing -- was Erwin Bircher. He was the griever for number 7 blast furnace from 1983 to 1986. He testified that he filed a grievance on behalf of the mobile equipment sequence over the use of crane C by the labor leaders. The grievance was resolved in the second step with an agreement that the labor leader could operate the crane for up to 30 minutes a day but that all other operation was to be done by someone in the mechanical equipment sequence. The company ignored this testimony in its primary presentation on final argument but had to address it on rebuttal. Mr. Parker observed that the union had offered only oral testimony and had submitted no paperwork to back up its interpretation of the settlement.

It is true that the union offered no paperwork. Presumably, however, such evidence would have been equally available to the company and, if Bircher's testimony was incorrect, the company could have tendered the documents. Equally important, Bircher testified that the agreement was reached with, among others, Dale Rosenow. Rosenow was present at the hearing, but did not testify. Given the lack of any rebuttal, and my impression that Bircher was a credible witness, I must credit his testimony.

Discussion

This is an unusual case. I agree with almost every argument the company advances. I recognize the difficulty with segregating out one piece of equipment and finding that a particular sequence has established the exclusive right to operate it, especially when there is nearly identical equipment nearby that requires identical skills. I recognize also that the employees of other sequences have operated this crane on occasion. But for the testimony of Bircher, this would not be a difficult case.

In a recent case I noted the difficulty of identifying the appropriate body of work in disputes such as this one. In Inland Award 869 I reviewed some of the cases relied on by the parties in similar disputes and recognized the tendency of management and union to pull in different directions in establishing the relevant body of work. In general, the company tries to broaden the scope of work as much as possible, in order to increase the likelihood that more than one seniority sequence has performed it. In this case, then, the company urges that I look at all cranes in the no. 7 blast furnace department and not focus narrowly on one crane in the mason building. In contrast, the union usually tries to narrow the focus, thus decreasing the likelihood that more than one seniority sequence has performed the work. Here, for example, the union would have me look at just crane C.

Frankly, I have difficulty understanding how just one crane among many in a department could form the basis for a claim under the principles of Article 13, section 3 and Article 2, section 2. I have noted similar difficulty in other cases, a dilemma I did not solve in Inland Award 869. I did recognize in that case, though, that however else an appropriate body of work might be identified, it could be created by the parties by agreement. That seems to me to be the case here.

The position the company advocates in this case is fundamentally inconsistent with the grievance settlement testified to by Bircher. If, as the company claims, it has maintained the right of assignment of crane C, then why did it concede that the labor leader would operate it for only 30 minutes or less a turn? If, as the company now claims, it has the right to assign the work as it sees fit, presumably it would have advised the union of that fact in the previous case.

I see little difference between the grievance Bircher testified to and the present case. There, as here, the union claimed that it had the right to assign employees other than mobile equipment operators to operate C crane. There, as here, the union asserted that the mobile equipment operators had the exclusive right to such work. In the previous case, however, the company essentially conceded the position the union now holds -- that the work of operating crane C properly belonged to the mobile equipment sequence in the no. 7 blast furnace. That concession continues to haunt the company in this case.

The grievance procedure provides that no settlement reached at step 1 of the process can be used as precedent in a subsequent case. This, however, was a step 2 settlement and there is no similar provision limiting its precedential significance. The inference is, then, that the parties settled this case at a level when they understood their agreement could continue to bind them. I know of no other way to interpret the grievance settlement than to say that it recognized that the work of operating crane C belonged to the mobile equipment sequence. It is not necessary to speculate about why the parties agreed that the labor leader could do up to 30 minutes of such work a day. This was not an agreement that defeated the jurisdictional rights of the mobile equipment sequence. Rather, it preserved them, but granted the company a limited exception. The company cannot now claim that it has a free hand to assign the work as it sees fit. That issue has already been settled.

Even though the grievance settlement is sufficient to establish the appropriate body of work, there remain two company arguments. First, the company asserts that, agreement or no, the employees of other seniority sequences also performed the work. The evidence over this is in conflict. I'm inclined to believe the company witnesses who testified that they saw employees from outside the mobile equipment sequence operate the crane, but I am not prepared to believe that this operation was inconsistent with the so-called 30 minute rule (which is how the union witnesses described it), at least following the grievance settlement. The union's testimony that mobile equipment employees were called to the mason building to operate the crane suggests that the company did not feel it was free to assign the work as it saw fit. It may be that other employees operated the crane more often prior to the grievance settlement. Any such operation prior to the grievance settlement is not necessarily of any relevance since the settlement seems to be a recognition by the company that it had no right to assign other than mobile equipment employees, except for limited periods.

In addition, the company asserts that if the operation of crane C is a separate body of work, the basis for the assignment to the mobile equipment operators has changed, since there is now much less work available than before. Actually, Mr. Parker did not address this issue directly in closing argument, but the company did introduce evidence about crane usage and it argued the matter in its brief. In support of its position, the

company introduced the results of a time study that indicated that on two days in 1991 and one day in 1992 the crane operated from a low of 17% of the turn to a high of 36% of the turn.

Although the union does not claim that its evidence is a time study, it too offered evidence of observations of crane operation by a welder assigned to the maintenance building. He observed the crane on 12 days selected at random. During that period, the average use per turn was more than four hours, ranging from a low of less than two hours to a high of more than seven hours. The company rightly points out that this was not really a time study and it also questions whether the employee -- who worked wearing a welding visor -- could accurately observe crane usage. That is a legitimate question, although one might wonder whether the requirement that he do other work might not mean that the welder understated rather than overstated the usage of the crane.<FN 1>

Neither of these time studies is directly in point. The question before me is not how often the crane operates now, nor even whether the company could now take the work away from the mobile equipment sequence, Rather, the question is whether there was so little work left in 1990 that the duties were only residual. I cannot conclude that such was the case on the basis of the record I have. The evidence submitted by the parties indicates that the work still exists and that it existed in 1990, when the company acted. Moreover, the amount of crane operation does not appear to me to be insignificant and there is no reason to believe there was less work in 1990 than currently exists. Moreover, the tractor operator had duties other than crane operation to perform. Accordingly, I am unable to find that the amount of work at issue was merely residual.

As I have observed in previous cases, the current restructuring at Inland Steel leads to difficult disagreements between the parties. I have no doubt that the company's action here served its interest in efficient operation. In his final argument, Mr. Parker observed that the changes made sense. That may be so, but that is not properly my concern. I have observed in the past that labor arbitrators do not have a roving license to do good. Our function is merely to interpret the agreement, and in this case the agreement prohibited the company's action.

AWARD

The grievance is sustained. The company will provide a make-whole remedy.

/s/ Terry A. Bethel

Terry A. Bethel

April 24 1993

<FN 1>Contrary to the suggestion of Mr. Parker in final argument, the welder's status as a member of the bargaining unit does not undermine the value of his evidence. At least, his status is no more damaging than the fact that the engineer who performed the company's study is a member of management, or at least a non-unit employee.