Award No. 886
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
June 8, 1994
OPINION AND AWARD
Introduction
This case was presented in arbitration pursuant to the following stipulation:
The issue in grievance 24-T-83 is whether the grievants were properly stepped back from their established sequence during the week of June 28, 1992, in light of the provisions of the Collective Bargaining Agreement.
The grievants were successful bidders to the Material Handling Service Department Mobile Equipment Sequence. Each completed their initial sixty (60) training turns, thereby becoming established in the sequence, and were working towards the completion of the additional one hundred and thirty-five (135) training turns identified in the Letter of Understanding between Inland Steel Company - Indiana Harbor Works and Local 1010 - United Steelworkers of America concerning Training for Employees Entering the Mobile Equipment Sequence of the Material Handling Services Department.
Beginning the week of June 28, 1992, the grievants were displaced to labor positions in the Material Services Department and have not subsequently worked in the Mobile Equipment Sequence.
The case was tried in the company's offices in East Chicago, Indiana on February 17, 1994. Brad Smith represented the company and Mike Mezo presented the case for grievants and the union. Both sides filed post-hearing briefs, which I received in late April, 1994.
Appearances
For the company:
B. Smith -- Arb. Coord., Union Rel.
D. Gerlach -- Manager, EP&D Distribution
D. Maravilla -- Sec. Mgr., MHS
For the union:
M. Mezo -- President, Local 1010
J. Robinson -- Staff Rep., USWA Dist. 31
A. Jacque -- Grievance Chrm.
J. Griffin
P. Santos
C. Mitchell
F. Gonzales
Background
There is no real dispute about the facts. The grievants are three long service employees who bid into permanent openings in the mobile equipment sequence in late 1991. The record does not disclose exactly when the grievants began their training on various pieces of mobile equipment, but it was apparently at or near the end of 1991. The grievants' bids were controlled not only by contract, but also by the terms of the Letter of Understanding mentioned in the stipulation, above. The focus of this dispute is the extent to which the Letter of Understanding modified the contractual procedures.
The Letter of Understanding reads as follows:
This letter is to confirm the understanding between the company and the union concerning the requirements for filling permanent vacancies in the Mobile Equipment Sequence. The company and union will act jointly to make all employees bidding for entry into the Mobile Equipment Sequence aware of these requirements.
1. Employees successfully bidding into the Mobile Equipment Sequence will initially be required to complete a thirty (30) working turn training period. This initial thirty (30) turn training period will include training on the grader, payloader, front end loader and bulldozer. The company may determine that a particular employee has qualified for all or part of this initial thirty (30) turn training period prior to the actual completion of the initial thirty (30) turn period. During this thirty (30) turn training period, employees will be paid at the department's established Learner rate of pay for each particular occupation and will not be paid any incentive earnings. Following the successful completion of the first thirty (30)

working turn training period, employees will be paid the rate of pay for the occupation which they work plus applicable incentive earnings.
2. During the first sixty (60) training turn period an employee may voluntarily return to the department and sequence from which they transferred or the company may return him to the department and sequence because they cannot fulfill the requirements of the job (Article 13, Section 6).
3. Employees who successfully complete the initial thirty (30) training turns plus the second thirty (30) turn training period will be required to complete 135 working turns of additional training turns within the Mobile Equipment Sequence to qualify as a Mobile Equipment Operator. Any turns worked in labor will not count toward the completion of any step in the training procedure. No employee can be assigned to labor prior to completion of the initial sixty (60) training turns. Overtime hours worked will not count toward the completion of the additional 135 working turns required.
[paragraphs 4 and 5 omitted]
Article 13, Section 6, mentioned in the Letter of Understanding, contains the contract procedure for filling permanent vacancies. Implicated in this dispute is subparagraph (6), mp 13.32.7 which provides, in relevant part:
If an employee accepts transfer under this Section 6, his seniority rights in the department from which he transfers will be cancelled after thirty (30) turns worked (excluding training turns up to a maximum of thirty(30)) in his new department, provided, however, that during such thirty (30) turn period such employee may voluntarily return to the department and sequence from which he transferred or the company may return him to that department and sequence because he cannot fulfill the requirements of the job. The company and the union may agree that entry level vacancies in certain sequences may require extended training periods beyond the aforementioned thirty (30) turns. Any such agreement to be valid and enforceable must be in writing and signed by the Union Step 4 Representative and the Manager of Union Relations.
The grievants entered the department apparently in late 1991 and began the training turns mentioned in the Letter of Understanding. Each of them completed the initial 30 turn training period identified in paragraph 1 of the Letter as well as the subsequent 30 day period. It was following this subsequent 30 day period that the grievants' seniority rights, if any, in their pervious departments were cancelled. The parties agree that the grievants became established in the mobile equipment sequence at this time, though they disagree about their sequential standing.
The company takes the position that, pursuant to paragraph three of the Letter, the grievants were established in the sequence only as learners and that they could move above that level only by completing the additional 135 training turns. That is, they would not be able to "qualify as a Mobile Equipment Operator" until after they completed the 135 additional turns. The union, on the other hand, asserts that the grievants were qualified to operate several pieces of non-boom mobile equipment and that, as such, they were no longer properly classified as learners who could be stepped back from the sequence in favor of other sequential employees with less seniority.
That, however, is exactly what happened on June 28, 1992. As noted, each of the grievants had completed the initial 60 turns and was established in the sequence. In addition, each grievant had completed some part of the additional 135 turns. Although there were no precise records presented at the hearing, a company witness testified that the grievants had completed approximately 140 of the 195 turns identified in the Letter. Due to a fall off in work, the company decided to reduce the number of employees in the sequence beginning June 28, 1992. Although grievants were not the most junior employees in the sequence, the company displaced them because they had not yet completed all 195 turns and, according to the company's interpretation of the Letter, were not yet established in other than the learner occupation.
The union asserts that the company's action misconstrues the Letter which, the union asserts, does not require that a bidder complete all 195 turns in order to become established in the sequence as other than a learner. Alternatively, the union argues that if the Letter requires the completion of a total of 195 turns for a bidder to become established in the mobile equipment sequence above the learner occupation, then the Letter is unenforceable under Article 13, section 6 (d). That section permits "local seniority agreements" which allow for the filling of vacancies outside the procedures otherwise established in section 6, but only so long as they do not "unnecessarily restrict the transfer and promotional rights provided by [Article 13]."
The union contends that I need not reach the "unnecessarily restricts" language of paragraph (d) because, as the union sees it, the Letter is not a local seniority agreement. In order to qualify as such, according to paragraph (d), such an agreement must "provide for the filling of vacancies otherwise than as set forth in "a, b and c of section 6. . . ." The Letter does not do that, the union asserts but, instead, merely recites what

section 6(c) already requires -- namely that an employee forfeits his seniority in his previous department after working 30 turns in his new department, not counting up to 30 additional training turns.

The significant part of the Letter, the union claims, is paragraph 3, which imposes the 135 additional turns. According to the union this paragraph does not, as the company claims, mean that the successful bidders had to work a total of 195 turns in order to become established in something other than the learner's occupation. Rather, the union reads paragraph 1 to mean that the initial 60 turns training qualifies an employees to operate the grader, front end loader, pay loader and bulldozer. The remaining 135 turns are necessary for employees to become qualified to operate the remaining non-boom equipment in the sequence. Because under the union's reading the grievant's were qualified to operate some or all of the pay loader, grader, front end loader, and bulldozer, and because such work continued to exist and to be performed by junior employees after the grievants were displaced from the sequence, the union claims that the grievants' seniority rights were violated.

Discussion

The company's witnesses testified forthrightly about the company's interest in negotiating the Letter of Understanding. As the company continues to down-size, employees with substantial seniority are displaced from their sequences. For a variety of reasons not relevant to this case, the work of the mobile equipment sequence started to expand as other sequences were shrinking or even disappearing. Because of the changes in the plant, there was no shortage of employees to work in the department as applicants. The company was concerned, however, about the frequent turnover of applicants. Substantial training is required in order to operate the equipment, with some pieces of equipment requiring more training than others. Not infrequently, the company would train an applicant only to see him replaced by a senior employee after his training had made him valuable to the department.

Initially, the union and company tried to solve the problem by agreeing that applicants in the mobile equipment sequence could be bumped only once every six months. Although there was not much testimony about this, it obviously did not solve the problem so the company decided that it wanted to post permanent vacancies. The nature of the potential bidders, however, caused the company some concerns. As is true with the grievants in this case, the bidder pool contained employees with many years service -- in some cases more service than experienced incumbent operators. Although the company hoped that the work increase in the department was permanent, it was concerned that the work load would shrink after the new vacancies were filled and that if layoffs were necessary, the new employees would cause more experienced but less senior workers to be displaced.

Section 6(h)

It was the fear that junior, more qualified employees would be displaced, company witnesses said, that caused the company to negotiate the additional 135 turns. In the company's view, completion of all 195 turns -- the initial 60 plus the additional 135 -- is necessary for an employee to be qualified on any level of the sequence other than learner. The company pursues this argument in its brief, though from a slightly different direction. Mr. Smith asserts that the Letter helps define the ability factor listed in Article 13, section 1's definition of seniority for promotion and layoff purposes. Ability is of some importance, the company says, because of Article 13, section 6(h), which provides:

Step-Backs. All step-backs within a sequence for any reason shall be in accordance with the provisions of this article. When such step-backs are being made, the company shall not apply the ability factor where the employee has performed the duties of the job for six (6) months or more.

According to the company, the Letter defines how the ability factor is to be applied in the case of layoffs. As Mr. Smith argues, "for a period of 135 turns, the parties have agreed that the grievants are deemed to be of lesser ability. . . ." Thus, because ability is part of seniority, the grievants had the least seniority when step-backs were necessary and, accordingly, were properly stepped-back.

I have considerable doubts about this interpretation. Article 13, section 1 does make ability a part of seniority for layoff purposes. However, Mr. Smith's argument does not explain how the company can circumvent the second sentence of section 6(h), which restricts the company from considering ability when employees have been performing the job for six months or more. As noted above, the record is vague about how long the grievants spent in the mobile equipment sequence. It appears, however, that they performed the duties of the job for a minimum of six months. Testimony from company witnesses indicated that the grievants completed about 140 turns. Since the Letter provides that overtime turns would not count, the 140 turns were apparently accumulated at five per week. This would mean that the grievants worked approximately 28 weeks, or more than enough to satisfy the six month limitation in section 6(h).

I see nothing in the letter of understanding that extends the six month limitation in section 6(h). The six month period seems unrelated to any other time period in which employees establish the ability to perform a job. Thus, section 6(c) (6) provides that transferring employees have up to 30 training turns, followed by 30 working turns before becoming established in their new department. Presumably, section 6(h) would allow the company to take their ability into account even after those 60 turns, but only for their first six months on the job. Section 6(c) (6) does allow the training turns to be extended by agreement, but it imposes no limitation on how many turns may be added. Nor does it provide that the six month limitation of section 6(h) is likewise extended. Nor, for that matter, is there any such agreement in the Letter of Understanding.

I have not previously had occasion to construe section 6(h) and the parties have not cited interpretations by other arbitrators. As I understand this provision, it places a limit on the company's ability to consider ability when applying seniority for step-back purposes. It is, then, a specific limitation on the general definition found in Article 13, section 1. Although it may be that the parties can agree to waive this limitation, they must do so specifically. It is not sufficient merely to provide for additional training turns that extend beyond six months. I see no evidence in this case that the six month limitation of section 6(h) has been waived.

The Letter of Understanding

During the hearing, the company asserted that the Letter of Understanding was a local seniority agreement under section 6(d). The union denied the applicability of section 6(d), but contended that if the Letter was a local seniority agreement, it was unenforceable. In its brief, the company contends that it is unnecessary for me to classify the Letter as a local seniority agreement. Rather, it asserts that the meaning of the letter is of primary importance.

I have some doubts about the company's earlier contention that the Letter of Understanding is a local seniority agreement. According to section 6(d), such an agreement must vary the procedures for filling vacancies under sections a, b, and c of Article 13, section 6. The Letter, however, does not do that. All it does is add additional training turns. But section 6(c) itself contemplates just that procedure and even provides express direction about how it is to be accomplished.

The Letter of Understanding, then, adopts the procedures of section 6(c) and does not vary them. <FN 1> Although my conclusion that the Letter of Understanding is not a local seniority agreement avoids the necessity to determine whether is unreasonably restricts promotional rights, it does not necessarily make the case easier to resolve. <FN 2> Paragraph 3 of the Letter provides that bidders must complete a total of 195 turns before they could "qualify as a Mobile Equipment Operator." The company contends that this language required the grievants to remain at the learner level of the sequence until their training turns were completed.

The union, on the other hand, asserts that the grievants were qualified to run the grader, front end loader, payloader and bulldozer and that the additional turns were intended to make them proficient on the other pieces of non-boom equipment.

One of the problems is that, while the Letter of Understanding speaks of the additional turns qualifying an employee as a "Mobile Equipment Operator," there is, in fact, no such occupation in the mobile equipment sequence. Rather, the non-boom occupations, from bottom to top, are as follows: Learner Operator, Payloader, Front End Loader, Roadgrader, Bulldozer, Slag Dozer, Traxcavator, and Slag Ldr. Non-op. As I understand the company's position, it wants employees in the sequence to be proficient on all of the non-boom equipment. Obviously, this would allow the company maximum flexibility to cover the available work.

The Letter of Understanding, however, does not say that an employee must be qualified on each piece of equipment in order to hold an occupation within the sequence. In fact, as I understand how seniority sequences work, employees sometimes remain in occupations because they are unable -- or unwilling -- to move to a higher level. That, essentially, is the union's position in this case. It claims that paragraph 1 of the Letter of Understanding provides that bidders will receive training on the four pieces of equipment at the lowest level of the sequence -- the payloader, front end loader, road grader and bulldozer. The bidders were then to become established in the sequence following that training and an additional 30 turns. The remaining 135 turns, the union says, were to qualify employees on the remaining, and more difficult, equipment.

Although the matter is not completely free from doubt, I find merit in the union's interpretation. The first paragraph of the Letter of Understanding does say that bidders will be trained on the four most basic pieces of equipment and, equally important, it holds out the possibility that they could become qualified on the

equipment prior to the expiration of the first 30 turns. In addition, company witness Gerlach testified that an employee could become qualified on the payloader in 30 turns, with an additional 15 turns required to move to the front end loader. He also said that employees could perform more complex tasks with the front end loader after an additional 30 turns. Obviously, each of the grievants had completed more than this number of turns by the time they were displaced. I fail to understand, then, why they were not qualified on at least the payloader and the front end loader, and possibly on even more equipment. It is reasonable to believe that following the expiration of the first 60 days, the bidders would be established in one of the lower non-boom occupations and that they were qualified in more than one by the time they were displaced. As such, they could not be displaced in favor of junior employees who could also operate other equipment, at least in the absence of evidence that there was not sufficient work available in the lower occupations.

I understand why the company wants the flexibility inherent in a work force where each employee had multiple skills and can operate numerous pieces of equipment. But I find nothing in the Letter of Understanding -- and the company has pointed me toward nothing else -- that allows the company to disregard the fact that an employee who is qualified in a particular occupation can be displaced out of the occupation when there is work available for him, merely because he cannot also perform the work of other occupations in the sequence. <FN 3> At least, if the company wants such flexibility, the Letter of Understanding does not clearly express that this is what it bargained for. <FN 4>

In his brief, Mr. Smith asserts that the grievants took a risk in bidding into the mobile equipment sequence -- one that was fully disclosed on the job posting -- and that they now seek to escape from the consequences of their decision. In fact, nothing contained in the job posting says expressly that a bidder must work all 195 turns in order to be established as other than a learner. It does say that an employee must work 195 turns to complete training, but that alone does not suffice to tell an employee he will have no standing in the sequence until all training is completed. It also says that employees may revert to labor during low demand periods, but that, presumably, is always true.

The risk argument can be used against the company as well as against the grievants. As the testimony of company witnesses established, management was aware of the possibility that opening up jobs for permanent bid might mean that longer service new bidders would displace junior, but highly skilled operators. Given that fear, one must question why the Letter of Understanding is drafted in such an ambiguous manner. No part of it recites that senior employees can be displaced until the have completed 195 turns. To the contrary, a fair reading is that new bidders could become established in certain occupations after 60 turns, but could not expect to qualify on all non-boom equipment until after 195 turns. Since management recognized the consequence of a plant-wide seniority system, I cannot find that the Letter of Understanding was sufficient to undo what the contract otherwise establishes. Accordingly, I must sustain the grievance. There was little discussion of the appropriate remedy at the hearing. I will, then, order the company to provide the make-whole remedy to which grievants' seniority and occupation would entitle them.

AWARD

The grievance is sustained. The company will provide a make-whole remedy in accordance with the last paragraph of the opinion.

/s/ Terry A. Bethel

Terry A. Bethel

June 8, 1994

<FN 1> Further evidence that the agreement to add training turns provided for in Section 6(c) is not also a local seniority agreement under section 6(d) is the fact that the two types of agreements have different signature requirements. Thus, an agreement to increase the number of training turns has to be signed by the union's step 4 representative and also by the company's union relations manager. Those same individuals must approve a local seniority agreement, but such documents must also be signed by the manager and grievance committeeman involved, a requirement not found in section 6(c).

<FN 2> Indeed, this finding could lead to the conclusion that the agreement is unenforceable because not properly signed. As observed in the previous footnote, both an agreement to extend training turns under section 6(c) and a local seniority agreement under section 6(d) have specific signature requirements. Neither requirement appears to be satisfied in this case. At the hearing, but not in the union's brief, Mr. Mezo asserted that the union would not challenge the defect in signatures "only if it [the letter of understanding] is deemed to be a local seniority agreement." While this argument was not pursued in the brief, the inference is that, should I find that the Letter of Understanding is not covered by section 6(d),

then the union contests its enforceability for lack of appropriate signatures. Because I conclude that the union's interpretation of the Letter of Understanding is substantially correct, I need not address whether the letter is void for lack of proper signatures.

<FN 3> Although there was testimony about how desireable it is for employees to have multiple skills, there was no testimony that employees who are qualified on a payloader, for example, must also be qualified to operate a slag dozer in order to function in the pay loader occupation. In addition, while the company did introduce the learner job description, it did not introduce any job descriptions for other levels in the sequence. I have no way of determining, then, whether an employee in one occupation is also required to operate other equipment in the sequence.

<FN 4> I understand the 135 additional turns provided for in paragraph 3 of the Letter to be sufficient to qualify an employee to operate all of the non-boom equipment. Obviously, such a skill level could protect an employee from layoff as long as there was some non-boom work available to the department. But it does not follow that employees in a lower occupation can be displaced because they cannot operate equipment not required in their occupation -- at least as long as work is available to their occupation.