Award No. 894
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
August 31, 1994
OPINION AND AWARD
Introduction
This case arose from the company's decision to reduce the crew size in the tundish reconditioning area. The case was tried July 1, 1994 in the company's offices in East Chicago, Indiana. Pat Parker represented the company and Mike Mezo presented the union's case. The union filed a pre-hearing brief and the parties submitted the case on final argument.
Appearances
For the company:
P. Parker -- Sen. Rep., Union Rel.
B. Smith -- Arb. Coord., Union Rel.
W. Sammon -- Sec. Mgr., Bus, 2 BOF/CC
For the union:
M. Mezo -- President, Local 1010
A. Jacque -- Chrm., Grievance Comm.
M. Bochenek -- Griever
N. Huzzie -- Grievant
J. Valpatic -- Grievant
D. Woolsey -- Grievant
Background
The contract doctrine surrounding this case is clear. The parties agree that the established crew size in the tundish reconditioner area in 2 BOF/CC has been 5 tundish reconditioners per turn. <FN 1> In 1991, as the result of a series of changes that occurred over the previous 4 years, the company reduced the number by one employee per turn. The issue in this case is whether the company has justified that action according to standards developed under m.p. 2.2.3 and 2.2.4.
A crew size can be an established local working condition under m.p. 2.2.3. According to that section, such local working conditions can be changed if "the basis for the existence of the local working condition is changed or eliminated." There is no dispute here about the existence of the crew size as a local working condition. Nor are the parties in disagreement about the basis for the practice, which was the volume of work available at the time the condition was established. The only question before me is whether that volume has been decreased sufficiently to justify the conclusion that the basis has been changed, thereby permitting the company to reduce the crew size.
There is also no dispute that the changes sufficient to change or eliminate a local working conditions do not have to occur overnight or, as the company advocate put it, "in one fell swoop." Rather, other industry arbitrators have recognized that changes may occur over a period of years, with none being sufficient in itself to justify the alteration of a crew size. Nevertheless, at some point the change may become so substantial that the company's action is justified. Not surprisingly, arbitrators sometimes employ a "straw that broke the camel's back" analysis, which seems particularly apt in such circumstances.
In the instant case, for example, the company points to a number of changes over a four year period, some of which were more significant than others. The company concedes that none of the changes, standing alone, would justify the reduction of the tundish reconditioner crew. By 1991, however, the company says that sufficient change had occurred to warrant the reduction. The hearing, which took an entire day, was devoted principally to a review of each of the changes relied on by the company to justify its action. Given the volume of testimony, I will first review the changes individually.
Company Exhibit 6 lists each of the changes relied on by the company:
1. Stopper rods
From 1985 to 1987, all bloom casts used stopper rods. Beginning in 1987, stopper rods were used only in non-lead tundishes. The company's witness, Bill Sammon, testified that at one time, 7 of the 8 non-lead tundishes used stopper rods. After the change, however, the number of non-lead tundishes that used stopper

rods averaged about 35%, or about 3. The remaining tundishes are set up with riggings, but do not actually use stopper rods. This change meant that less time is now necessary to prepare a bloom tundish, a savings Sammon estimated at about 1 hour per turn.

This testimony was disputed by union witness Nancy Huzzie, who claimed that all tundishes that had stopper rods prior to 1987 continue to have them. On cross examination, however, she acknowledged that lead heats previously required stopper rods, but no longer do.

2. replacement of the tundish building crane

Sammon testified that in 1985, the tundish reconditioning area began work with a crane that had serious mechanical problems and that broke down frequently. These breakdowns, he said, seriously disrupted the activities of the tundish reconditioners. The crane was replaced in 1988 with a more reliable crane, a move that Sammon said "drastically reduced maintenance." Prior to the replacement, Sammon said the tundish reconditioners were required to spend time calling maintenance personnel and explaining the malfunction. Union witnesses acknowledged that this occurred, but disputed Sammon's estimate that the new crane saved a total of one-half man-hours per turn. On cross examination, Sammon indicated that his estimate was based on his memory of how often the crane had been down. He did not use maintenance records or other data to assist his calculations. In fact, he said that the only estimate supported by data was the increase in string length, discussed below. The other estimates were based on observation and conversations with other supervisory personnel.

The union asserts that the effect of the old crane was substantially less that estimated by Sammon. Moreover, Mr. Mezo contended that a new crane should actually have made the tundish reconditioners more, rather than less efficient. Though I don't disagree with Mezo's argument -- and, for that matter, I doubt that the company does either -- Sammon did not really argue that the tundish reconditioners were inefficient. Rather, he said that the malfunctioning crane interfered with the employees' ability to work and also caused them additional time because of their interaction with the maintenance personnel. In my view, only the latter contention is relevant here.

I have no doubt about Sammon's claim that the faulty crane caused production problems, especially if employees had to wait around to make required moves. But I have difficulty believing that the company would deliberately overstaff an area because of a defective crane. Thus, the most reasonable conclusion is that the company had assigned the appropriate number of employees for the work at hand, but those employees were hampered when the crane malfunctioned. Even so, a good crane wouldn't reduce the amount of tundish reconditioning work that had to be performed. It would merely allow the employees to get it done more efficiently. What the good crane would do, however, is reduce the amount of time tundish reconditioners had to spend with maintenance personnel. I must say, however, that I have difficulty believing that tundish reconditioners spent an average of a half hour on every turn talking to maintenance men. It seems more likely that the half hour average includes time that the reconditioners had to be inactive because of the crane. But, as already noted, that did not reduce the volume of their work, it only shifted it to a different time.

I conclude, then, that while the new crane had some impact on the tundish reconditioners, the half hour a turn estimate is too high.

3. installation of the combi casting machine

Although it has always been called a combi machine, the machine was used to cast only blooms until 1988. During that year, the company modified it to make it a true combi machine, with the result that, since then, it has cast both blooms and casts, with the numbers about equally divided. Sammon testified that this change significantly reduced the work for tundish reconditioners. Some bloom casts use stopper rods which, as indicated above, entail additional work for the reconditioners. I have difficulty attributing much separate significance to this change, however, since the company also counts a work reduction for a stopper rod reduction in item 1, above. That item would appear to include the reduction that occurred as a result of the change from all blooms to half slabs.

Another change wrought by the combi machine, the company says, involves a reduction in the use of gates. Bloom casts use four gates as opposed to two for slab casts. The modification, then, meant that there were fewer gates to recondition.

4. 4 mg shutoff of ladles

This change occurred in 1989 and involved leaving 4 mg (a metric ton) of slag in the ladle, which meant there was less slag in the tundish. This, the company claims had an effect that Sammon characterized as "not tremendous," but did save an estimated half hour per turn. The savings resulted from the fact that slag

erodes tundish refractory and, with less slag entering the tundish, there is less damage. The union points out that Sammon offered no data to support his assertion.

5. new tundish dryers

The dryers initially installed in the tundish reconditioning area were, Sammon said, insufficient and unreliable. The result was that, like the first crane, the dryers often malfunctioned. Reconditioners had to spot check the job done by the dryers and, when they went down, call repairmen to fix them. This latter duty is similar to what was required of reconditioners who had to explain crane problems to repairmen. In addition, tundish reconditioners were sometimes required to set up a gas spider to dry tundishes. Although time consuming and inefficient, Sammon acknowledged on cross examination that the spider was seldom used. It was not, therefore, a significant part of the tundish reconditioner's duties.

The company purchased two new dryers in 1990. The new equipment dries the tundishes in about the same time as the old ones, but is more reliable, which has reduced the need to spot check the process. In addition, tundish reconditioners are no longer required to spend time calling repairmen and explaining how the dryers malfunctioned. Sammon estimated that this change saved about a half hour a turn, an estimate that, as with the crane, seems somewhat high.

6. increase in cast string length on blooms

Sammon characterized this as a major change, which involved increasing the number of ladles cast per tundish.

Obviously, if the number of casts per tundish is increased, then fewer bloom tundishes will be required to produce the same amount of steel. Sammon said the string length has increased from 2.3 heats per tundish to 2.8 heats per tundish. This change was spread over about 25 bloom casts per week which Sammon said, had a significant impact. The amount of work for tundish reconditioners is most affected by the number of tundishes they are required to process. This change reduced that number.

Although the union did not necessarily question Sammon's testimony about cast string length, it did question his assertion that the number of bloom tundishes had been reduced. During the hearing the union asked if there was data to support Sammon's claim. Sammon indicated that he had such data available since the company measures the number of tundishes used. The information was not introduced at the hearing. The union pointed out in final argument, however, that a different exhibit -- Union Exhibit 6 -- showed fairly constant tundish usage throughout 1991. It questioned how the company could claim a reduction without introducing comparable data for 1990.

The union also asserted that the increase in cast string length had increased rather than decreased the work of tundish reconditioners. Longer use of the tundishes means there is more damage to the brick safety lining, which takes more time and effort to repair.

Sammon estimated that the increase in cast string length saved about one and one-half hours per turn, though the union would place it far below that level.

7. trumpet ladle shrouds

Installation of trumpet ladle shrouds between the ladle and the tundish in 1990 allowed the company to open a ladle with the shroud fully submerged in the tundish, thus eliminating the prior system which resulted in a few seconds of open pouring. This results in less mixing of slag and steel, which means that there is less slag erosion of the tundish safety lining. It also permitted easier skull removal. Sammon estimated that this change saved about a half hour per turn, an estimate union witnesses questioned. Although I credit Sammon's testimony, I have some difficulty understanding the basis for this estimate of time savings.

8. elimination of tundish refractory boards

This too, the company claims, was a major change. Prior to 1989, the working lining in the tundish was composed of boards, which the company compared to pieces of dry wall. Like the brick safety lining, these boards were installed by masons. Sammon said that the mason and a tundish reconditioner would set up some of the boards around the tundish and they would then be fed to the mason by the reconditioner. Sammon said there were 20 to 25 boards per tundish and that they were heavy and unwieldy. After the mason had installed the boards, the tundish reconditioner would then pour sand behind them in order to insure there was a tight fit to the safety lining.

Sammon said the time a tundish reconditioner spent with the mason "changed dramatically" when the company adopted the present system, which involves spraying on refractory material as the working lining. This began as a trial process in 1989 and was adopted permanently in 1991. The tundish reconditioners are still involved in stocking the spray material but no longer hand boards to the mason. Sammon estimated that this change saved about one and one-half hours per turn.

The union vigorously disputes the significance of this change. Employees testified that tundish reconditioners never handed all of the boards to the mason. Rather, their work was confined to handling the first six boards, which was 25% of the total. In addition, the tundish reconditioners did not pour sand behind the boards. Rather, this work was done by the masons. I credit this testimony and find that the time savings was substantially less than the company's estimate.

9. installation of steel dams in tundishes

Lead is added to about 65% of the bloom tundishes. Some of the lead does not go into solution. Previously, this lead sank and would go through the bottom of the tundish. It also seeped out around the gate and froze on that mechanism. Although this did not happen on each lead cast, when it did occur it caused substantial work for the tundish reconditioner, who had to remove the lead from the gates. Sammon said the company "many times" had to double someone over to do this work.

The company improved the process by installing steel dams between the pouring chamber of the tundish and the nozzles. The dam is a thin plate of steel covered with brick. The lead will seep through the brick but cannot get through the steel plate. Thus, it puddles on the bottom of the tundish and seeps into a pan. Sammon acknowledged that lead still seeps onto gates and requires clean-up, but to a lesser extent than before the installation of the dam. He estimated that this change saved about one and one-half hours per turn.

On cross examination, Sammon acknowledged that the company's practice of sending gates out for inspection -- the frequency of which has recently been increased -- has added a small amount of work to the tundish reconditioners, since they have to load the gates for shipment. This additional work was not accounted for in the estimate of one and one-half hours saved per turn. A union witness also claimed that the steel dams had worsened the problem of skulls sticking in the middle of the tundish, apparently because that is where the lead congregates. In addition, the same witness said the work of installing the steel dams had added duties to the tundish reconditioners.

10. deliveries on Monday to Friday day turn

Although it has reduced the number of tundish reconditioners, in 1991 the company began scheduling an additional reconditioner on day turn whose responsibility was to unload trucks and maintain the storage area. Previously, trucks arrived at random times -- usually on day turn, but not always -- and tundish reconditioners were forced to stop what they were doing and unload them. In addition, the storage area was not organized, which meant that reconditioners sometimes spent time moving loads around in order to reach needed materials. In 1991, the company told its suppliers that it would only accept deliveries on day turn, Monday through Friday. Sammon said deliveries occasionally still arrive on other turns, but not as often as before.

Trucks are now usually unloaded on day turn by the fifth tundish reconditioner. That has saved the other employees from performing this duty. Also important is the fact that the storage area is now organized, which means that employees can now obtain needed material without moving other things around. Sammon estimated that this change saved about two hours per turn. Sammon acknowledged that the consolidation of truck unloading on day turn did not actually save any work time, since it takes the same amount of time to unload trucks, no matter when they arrive. The two hours saved per turn, then, is attributable to organizing the storage area.

The union claims that the storage area is too small to accommodate all of the supplies used in the department, which means that employees must still make double moves. In addition, the union witnesses testified that prior to the assignment of a tundish reconditioner on day turn whose responsibility was to organize the area, the company had assigned a utility man to do the same thing. In final argument, the union asserted that this evidence called into question whether maintenance of the storage area was even tundish reconditioner work.

11. feed back forms

In 1991, the company began attaching feed back forms on tundishes, which were to be filled out by people on the casting floor. The company asserts that this improvement saved time for the tundish reconditioners because it resulted in quicker, more efficient repairs. I have difficulty accepting this argument. Evidence at the hearing indicated that feed back forms are seldom filled out by the production employees. The union introduced evidence which indicated that in some months, fewer than five percent of the forms listed any problems. This could mean, as the company claims, that over 95% of the tundishes were trouble free. But there was no testimony that those 95% were not inspected because there was no feed back form on them. The more likely inference for management to draw is that the feed back forms simply weren't working. I

cannot say that they would never have any effect, but I find no effect as of 1991, which was when the company reduced the crew size.

The union raises several arguments to counter the company's claims, some of which are noted above and other of which will be discussed below. In addition, the union claims that certain changes have added work for the tundish reconditioners.

Discussion

Although this case was not tried until mid 1994, it actually concerns a change that was made in 1991. Evidence of changes that extend back to 1987, then, are not as remote as they might seem. The company reminds me that it is not necessary for changes to occur in one "fell swoop." Rather, other arbitrators have recognized -- and I agree -- that the changes can accumulate over time.

Although there may be some limit to how far back the company can look, I have no difficulty accepting the company's claim that changes from 1987 to 1991 are relevant in this case. As I indicated at the hearing, however, I cannot look only at changes that diminished the work. As I have observed in other cases, the issue here is not solely whether the workload can be handled by the reduced crew. Rather, because the crew size is an established local working condition, it can be changed only under circumstances permitted by the contract. In this case, the claim is that the basis of the local working condition -- the volume of work required -- has changed. That is, the company asserts that the volume of work has gone down.

The company introduced considerable evidence concerning reductions in the work, but the union countered, not only by questioning the reductions, but also by asserting that work had been added. Since the volume of work is the issue, I must consider also the union's claim that there were changes in 1987 and later that actually increased the volume of work for tundish reconditioners. It is clear that this claim is accurate.

One such change involved a change from a cast safety lining -- the work for which was done outside (except for loading the tundishes for transport) -- to a brick safety lining. Sammon acknowledged that this change added work for the tundish reconditioners, who are required to unload the brick, take it to the area where the masons work, and set the brick on the lip of the tundish. Although not stated in the hearing, this process would also apparently involve some clean up work.

Unlike most of the other work of the conditioners, safety relines are not a daily occurrence. The parties dispute how often they occur, though Sammon acknowledged that slab casts are relined about once a year, meaning that one is done about every three weeks. Bloom tundishes are done more often, with each of the four of them being relined about once a month. Sammon estimated that it takes about 8 to 10 hours of a tundish reconditioner's time per reline.

Also of significance -- and a more frequent occurrence -- is the work required to patch or repair safety linings. There may have been some such work even before 1987, when the company used a cast safety lining, though there was no testimony about this. There was substantial testimony, however, about the work necessary to repair the brick linings, which has a variety of causes, including the removal of the skull with the gradal.

Skull removal is another area in which the tundish reconditioners' work has increased. Prior to 1989, this work was done by contractors. It has now been assumed by tundish reconditioners, and is a considerable body of work. Sammon estimated that it amounts to about three and one-half hours of work per turn. That is, though other work may have been eliminated, the employees now spend three and one-half hours per turn doing work that wasn't previously required. Obviously, this evidence mutes the significance of some of the changes relied on by the company to reduce the crew.

I also found credible union witnesses testimony that the skull removal process is more time consuming today than it was when they began it, thus adding even more work. The union attributed this difference to the sprayed on working lining, which replaced the refractory boards. They theorized that the presence of sand behind the boards made the skull easier to remove. Sammon questioned whether the skulls were harder to remove now. I don't question Sammon's credibility, but I am inclined to credit the testimony of the employees who remove the skulls on a daily basis. It may be that my decision is influenced, in part, by the fact that an employee was having difficulty with a skull when I toured the facility, which union witnesses estimated occurred 95% of the time. Whatever the reason, I find this testimony no less believable than Sammon's testimony that employees now recondition fewer tundishes than they did in the past.

Although I was impressed with the quality of the company's case, I find it impossible to conclude that the changes claimed by the company have justified its decision to reduce the crew size. I have no doubt that some of the company's claims are accurate. Thus, despite the union's testimony, I am inclined to believe that the installation of steel dams has reduced the work needed on gates. In addition, I was impressed by

evidence concerning the stopper rods and the trumpet ladle shrouds. I also believe that the reorganization of the warehouse has saved work, though I find it hard to accept the estimate of two hours per turn. I am also troubled by union evidence that this work was not previously performed by tundish reconditioners.

I am also inclined to believe that some savings resulted from the other improvements, though union evidence causes me to question the company's estimates. I do not mean to suggest that I believe Sammon intentionally exaggerated the estimates. In fact, Sammon impressed me as one of the more credible witnesses I have encountered. But some of his testimony was disputed by other credible witnesses in what I took to be a genuine disagreement about the effect of change. In some instances, the company's claim may have been aided by the introduction of data or time studies. That does not mean that there is no evidence to support the company's claim.

Testimony is evidence. But the company's testimony concerning time saved was an estimate, sometimes based on memory and observation, sometimes based on data that was not introduced and which the union, therefore, did not have the opportunity to inspect or evaluate. Since the company had the burden of proof as to this issue, it would have been helpful to have the information to which Sammon alluded. In short, if information exists that would help me resolve a conflict between two credible witnesses, then the failure to produce it hurts the party that has the burden of persuasion.

Equally difficult for the company in this case was union evidence about increases in the work load, particularly the gradal, which represents a substantial body of work. Because I have questions about the volume of time saved by the changes, and because the evidence indicated that other changes actually increased the volume of work -- substantially in some cases -- I find that the company had not met its burden of proving that there has been a change which justified the elimination of a local working condition. I will, therefore, sustain the grievance and order the company to provide a make whole remedy.

AWARD

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

/s/ Terry A. Bethel

Terry A. Bethel

August 31, 1994

<FN 1> Actually, at the beginning of the hearing there was some dispute about whether the number was higher or lower than five. For purposes of this case, however, the parties agreed that the issue is whether the number -- whatever it may be -- can be reduced as a result of change.