IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY

and Award No. 933

UNITED STEELWORKERS OF AMERICA

LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the union's claim that the company violated the Craft Administrative Guidelines when it removed grievant Nicholas Perez from the mechanical apprenticeship program. The case was tried in the company's offices in East Chicago, Indiana on October 21, 1997. Patrick Parker represented the company and Mike Mezo presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.

Appearances

For the company:

P. Parker	Arbitration Coord., Union Rel.
D. Ballard	RCM Engineer, EF & BC
N. Fodness	HR Area Mgr., Mfg. Mtce.
J. Medellin	HR Area Mgr., ISBC

For the Union:

M. Mezo	President, Local 1010
A. Jacque	Chair, Grievance Comm.
D. Jones	Griever
R. Flahardy	Witness
N. Perez	Grievant
S. Wagner	Griever

Background

Grievant entered the mechanical apprenticeship program in June, 1984. He was laid off the following month and did not return to work until October, 1988. By January, 1989, grievant had passed the required Basic Knowledge Questionnaires (BKQ) and had begun classroom training in Unit III of the program. Ultimately, grievant passed the Trade Knowledge Questionnaire (TKQ) for shop math and metal fabrication, but failed the TKQ for mechanical lubrication. Grievant failed the lubrication TKQ initially on December 13, 1989. He was retested and failed for a second time on January 17, 1990. At that point, and in accordance with the Craft Administrative Guidelines (CAG), the company began disqualification proceedings.

Section IV of the CAG provides a procedure for apprentices who have failed a TKQ. They are to be given certain remediation and then retested. Section IV.D provides that, if an apprentice fails a retest, he "may be dropped from the apprenticeship program." On January 25, 1990, grievant met with the "craft committee" concerning his future in the apprenticeship program. The following day, the company issued a document entitled "Apprentice Disqualification Disposition," which allowed grievant to take a second retest for the lubrication TKQ, subject to certain conditions. The union objected to the admissibility of that document pursuant to Section IX.F of the CAG.

Section IX of the CAG creates a Joint Apprenticeship Advisory Committee consisting of both company and union members. The Joint Advisory Committee is, among other things, authorized to advise management concerning training and to discuss apprentices "who are making unsatisfactory progress." There was some dispute about whether the meeting with grievant on January 26, 1990 was actually a function of the Joint Advisory Committee, since it is clear that not all union members of the Committee were present, though grievant did have a union representative with him. Moreover, as noted above, the document purports to be from the "craft committee" and, it turns out, there is a craft committee in addition to the Joint Advisory Committee, though the function of that body was not illuminated at the hearing. Nevertheless, company witness Dale Ballard testified that the January 26 meeting was conducted under the auspices of the Joint Advisory Committee and the company does not really contest this assertion.

Paragraph F of Section IX provides that the Joint Advisory Committee can "make recommendations." The paragraph concludes "Neither party shall in the course of the grievance and arbitration procedure refer to any statements made, or positions taken, during Joint Committee discussions." This language, the union says, prevents the company from introducing the disposition document issued on January 27 and prevents admission of the conditions attached to grievant's right to take a second retest. As the union sees it, the

document is the result of Joint Advisory Committee deliberations and, therefore, represents "positions taken" during the discussions. Allowing introduction of the document, the union says, would drive it away from any such discussions in the future.

Although the disposition may have resulted from a recommendation made by the Joint Advisory Committee following discussions with grievant, it does not follow that the document itself is inadmissible. Under Section IX, the Joint Committee is "advisory" and has the power to advise and to make "recommendations." Nothing in Section IX gives the Joint Advisory Committee the right to make decisions concerning the fate of apprentices. It may be, as the union argues, that a document sent to the company with the committee's advice would be inadmissible under Section IX.F. I need not resolve that issue because it is not presented to me in this case.

I agree with the company's claim that the document is a disposition. It concerns a decision made by the company -- perhaps following the Advisory Committee's advice -- that grievant would be permitted a second retake of the lubrication TKQ. The Advisory Committee itself has no right to make a decision. I find, then, that the terms of the disposition -- identified in the record as Company Exhibit A -- are admissible. Its admission does not compromise any of the policies protected by Section IX.F. I do not know of any statements made by any participant in the Advisory Committee meeting and I do not know of any positions taken by either the union or company representatives. What I do know is that following the meeting, the company decided that grievant would be allowed to take a second retest under certain conditions.

It is worth pointing out, however, that the finding that Company Exhibit A is admissible as a company decision has consequences beyond the applicability of Section IX.F of the CAG. Because the document represents a company decision, the company has no argument that the conditions are an "agreement" made between it and the grievant or it and the union. Rather, it represents unilateral action, though perhaps taking into account advice and recommendations from the Advisory Committee. And, because Company Exhibit A is not an agreement with the union, the company obviously has no right to limit the extent to which it will comply with other provisions of the CAG and other agreements concerning the apprenticeship program. I find that Company A is merely what the company claims it to be; it is notice of a company decision. But the question of whether that decision and its implementation were in accordance with relevant agreements is still an issue in the case.

In the disposition, Company Exhibit A, the company required grievant to enroll in a program to improve his English. In addition, the company imposed the following conditions:

1) All hours towards progression will be discontinued effective January 17, 1990, the day of your retest failure.

2) A second retest on TKQ #9031 will be scheduled by Dale Ballard....

3) Hours toward progression will begin again accumulating effective the date of a successful qualification on TKQ #9031.

Should you fail to successfully qualify on your second retest on TKQ #9031, your disqualification will be upheld with no further hearing before the Craft Committee on this issue.

Grievant took a short leave of absence in the summer of 1990 and did not certify his enrollment in a program to improve his English (a condition to scheduling the retest) until December, 1990. Although the company noted this delay in its argument, it does not argue that the delay itself disqualified grievant from the retest. Before a retest could be scheduled, grievant was laid off in February, 1991.

Grievant did not return to work until October 9, 1995, almost four years and eight months after his layoff. Because of the extended period of layoff, the company gave grievant 28 hours of instruction which, essentially, repeated the classroom training on lubrication that he had received before the layoff. Grievant retook the lubrication TKQ for a second time on May 30, 1996 and failed. On June 6, 1990, the company removed grievant from the apprenticeship program. It was that action that prompted the grievance which resulted in this arbitration.

The company says that it has already done more for grievant than it was required to do. The CAG provides that grievant has the right to retake a failed TKQ. Here, however, the company allowed grievant to retake the TKQ for a second time and, before that last test, it provided him with a refresher course in lubrication that essentially repeated the classroom work he had already had. The 1990 disposition made it clear, the company says, that if grievant failed the second retest, he would be removed from the program. That is what happened and the company says that grievant has no recourse.

The union's case does not focus on the disposition. Rather, the union grounds its case on certain provisions of the CAG, as well as a later mutual agreement. Under the CAG, the union points to Section IV.B and Section V of the CAG:

IV.B. Following satisfactory completion of all Basic Knowledge Questionnaires and upon completion of the required on-the-job and classroom training for a particular unit of instruction, an apprentice will be given the Trade Knowledge Questionnaires and the Representative Performance Assignments for that Unit of Instruction....

V. No apprentice shall, as a condition for Normal Progression and satisfactory completion of the Apprenticeship Training Program for a particular craft, be required to successfully complete Trade Knowledge Questionnaires ... for which the apprentice has not received on-the-job and classroom training. (emphasis added)

The union says that these provisions guarantee that grievant would receive appropriate on-the-job training prior to being required to take the lubrication TKQ. Grievant testified, however, that he did not receive any on-the-job training in lubrication, either before or after the 1990 disposition which allowed him to take a second retest. And, while the company does not necessarily agree with grievant's claim that he had no on-the-job training, company witness Dale Ballard, who administered the program at the time, acknowledged on cross examination that there was no formal on-the-job training program and that he could not establish that grievant had ever been given any such training in lubrication.

In support of its claim that grievant was entitled to on-the-job training before retaking the lubrication TKQ, the union cites several documents. First, it points to Company Exhibits 1 and 2. Company Exhibit 2 is an outline of the classroom training on lubrication. Company Exhibit 1 shows the seven units of instruction in the program, and correlates classroom training ("related education") with on-the-job training. Unit III provides for thirty hours of lubrication classroom training and says that the appropriate on-the-job training is "Safety Applied to Lubricants. Lubricants and their Application." The union says that the "required on-the-job training" identified in CAG Section IV.B and the on-the-job training mandated by CAG Section V is the training mentioned on Company Exhibit 1.

The union also points to a document entitled "Mutual Agreement ... concerning Training Assignments for Mechanical and Electrical Apprentices Assigned to MMS Department." As explained by Mezo, the union had been concerned about the inability of MMS apprentices to gain the necessary on-the-job training because MMS mechanics were confined to working on scheduled down turns. This made it difficult, if not impossible, for them to gain experience when the equipment was actually in operation. The mutual agreement provides for certain rotation assignments for apprentices to other departments and it requires, among other things, that "training assignments include exposure to equipment and the opportunity to develop the skills and acquire the knowledge necessary to progress in the apprenticeship program."

The union submitted the mutual agreement for two reasons: first, it shows the importance the parties have placed on the on-the-job training portion of the apprenticeship program, since the parties made special provisions to increase exposure. Second, the union says that grievant was never rotated to another department pursuant to this agreement. This supports the union's claim that grievant did not receive the on-the-job training necessary to pass the lubrication TKQ.

The company does not argue that grievant had any significant amount of on-the-job training and it acknowledges that it does not have any records showing any amount of such training. The company notes, however, that grievant admitted on cross examination that he had sometimes lubricated machinery and changed lubrication hoses during downturns, which the company says might have sufficed as on-the-job training. The company's principal response to the union's argument, however, is that no on-the-job training was required for the TKQ which grievant failed.

The company points out that there is more than one TKQ for lubrication. The one failed by grievant concerned lubrication theory. All of the answers, the company says -- and, indeed, grievant admitted this on cross examination -- were contained in the classroom material that grievant had been exposed to twice. Dale Ballard testified in some detail about the arrangements made to help grievant and about his belief that no on-the-job training was required for a lubrication theory examination. The company argues that it could not have been the intent of the parties to create a requirement for on-the-job training for each phase of the apprenticeship program because the program includes geometry and plane trigonometry, for which on-the-job training would not be possible.

The company notes that Company Exhibit 1 identifies 976 on-the-job training hours for Unit III, of which lubrication is a part. It makes no sense, the union says, to wait nearly six months before apprentices can be tested over their knowledge of lubrication theory learned in the classroom. The better tact, the company

says, is to examine them shortly after the classroom component, when they are most likely to retain the knowledge. That is what the company did here and, it says, what it has always done.
The company also questions the union's right to identify lack of on-the-job training as a defect in this case. The company acknowledges that the grievance over grievant's removal from the apprenticeship program was timely, but it says that it was apparent at the time of the disposition in January, 1990, what the retest terms would be. They said nothing about on-the-job training. Thus, if grievant was concerned about the quality of his training, the time to complain was when he received the disposition letter.
Discussion
I find no merit in the company's claim that grievant is precluded from raising the training issue in arbitration. As I held in a similar context in Inland Award 832, the appropriate time to file the grievance was when the company took action removing grievant from the apprenticeship program. In the first place, nothing in the disposition notice indicated that the CAG guidelines would not apply, so there was nothing to grieve at the time. Equally important, as I observed in Award 832, the grievant could not know whether the alleged violations of procedure had an impact on him until after he took the examination. Indeed, it is reasonable to assume that, had the grievant filed a grievance before the retest, the company would have argued that it was premature.
It is true that the company placed some conditions on grievant's ability to retake the TKQ for a second time. The union does not challenge in this arbitration the conditions the company put on that opportunity. It merely says that if grievant was to retake the test, he was entitled to have it administered in accordance with the provisions negotiated in the CAG, which say that no apprentice "shall be required" to complete a TKQ without the required on-the-job training. And, in fact, nothing in the disposition -- which the company says was merely its decision -- indicates that the CAG procedures would not apply. The disposition discusses how hours will be counted and says that grievant cannot take the retest until he takes action to improve his language skills. Moreover, it says that the committee would not give him another hearing if he failed the retest. Grievant, however, has not grieved the lack of another hearing but, rather, the company's failure to follow the procedures in the CAG.
Obviously, the company did not have the power to revoke or change the CAG procedures unilaterally when it issued its disposition. Whatever the company's ability to impose additional conditions might be, it cannot decide that the procedures negotiated in the CAG are not available to certain apprentices. I need not address whether the union could have agreed to waive those procedures. The company does not really argue that a waiver occurred and, in any event, the company established that the disposition was a unilateral act by the company and was not an agreement reached with the union.
I find, then, that the disposition issued by the company did not limit the procedures spelled out in the CAG and that the company was required to observe the requirements negotiated by the parties. Section V of that document says that apprentices "shall not be required" to complete a TKQ for which they have not had the required classroom and on-the-job training. The union's complaint here is that grievant was required to pass the lubrication theory TKQ without on-the-job training.
As noted above, the company's principal argument is that there was no on-the-job training for the lubrication theory TKQ. Rather, the company characterizes this as "book learning" which grievant should have mastered from the classroom. I have no doubt about the company's claim that all of the information necessary to pass the TKQ was contained in the classroom materials. But that does not settle the issue. It seems reasonable to assume that the information necessary to pass most, if not all, TKQ's would be in the classroom materials. It is not necessarily clear that on-the-job training would add new material. Indeed, given the difficulty of insuring that each apprentice has exactly the same on-the-job experiences, it would be risky for the company to examine students over material that is not covered in the classroom, at least to a significant degree. I accept the union's contention that on-the-job training is not necessarily meant to add new material, but rather is intended to reinforce and complement the classroom portion of the program.
I appreciate Mr. Ballard's testimony that on-the-job training would not be of great benefit on a lubrication theory examination. However, Ballard also said that he thought on-the-job training was a "necessary and vital function of the program." I cannot say that on-the-job training would have made a difference for grievant in this case. No one could issue such a finding. But it is also true that people learn in different ways and it is possible that a practical application of the classroom theory would have assisted grievant's understanding of the material, especially given the extended period of layoff. In any event, as I read the CAG, the parties agreed that on-the-job training would be made available before apprentices are required to take a TKQ <FN1>.

This is not to say that the company is required to defer the test until an apprentice has finished an entire unit of on-the-job training. It makes sense to give the TKQ close in time to the completion of the classroom component, as the company presently does. But that does not mean that no on-the-job training is possible. Ballard is obviously a skilled professional and it could be reasonable to trust his judgment about the amount of on-the-job training necessary for a lubrication theory TKQ. He does not have the discretion, however, to decide that no on-the-job training is required. The parties have already made that decision in the CAG.

There is no real argument that grievant had sufficient on-the-job training in this case. He testified that he applied grease to certain equipment during shutdowns and that he sometimes changed hoses. But this testimony was not enough to convince me that grievant had had any significant exposure to lubrication problems. And, the company acknowledges, grievant was not even rotated to other departments, as required by the mutual agreement.

The company, however, says that grievant was treated the same as all other mechanical apprentices and that the union has never complained about the process in the past. In that regard, the company cites Award 832, where I observed that the way parties have administered an agreement is some evidence of what they intended it to mean. That observation has a limited role in this case, however. In Award 832 the company contended that agreement to the CAG did not limit it ability to administer step tests, something it had done with the union's knowledge both before and after the CAG. In that case, however, the language was ambiguous and there was a significant question about whether step tests were permitted. In such cases, the way the parties have implemented and administered the agreement is of some relevance. It is less significant, however, in cases like this one, where the language is not ambiguous.

Moreover, I have significant doubts about whether the union knew that the company was not making on-the-job training available for the lubrication theory TKQ. Union Joint Advisory Committee Member Steve Wagner said that he has complained wherever apprentices have brought on-the-job training deficiencies to his attention. Company representative Ballard said the same thing. But both witnesses acknowledged that they are not familiar with the daily routine of on-the-job training, which is left to the departments. Nor has the company given the union a detailed outline of its on-the-job training process. Finally, Ballard testified that the company does not even keep records of the kind of on-the-job training experienced by apprentices. There is no reason to suspect, then, that the union was aware that there was no on-the-job training before the lubrication TKQ and had somehow acquiesced in that decision.

Because I have found that on-the-job training was required under the CAG and because the company did not afford grievant such training prior to the lubrication theory retest, I will sustain the grievance. As a remedy, the union requests that I return grievant to the program and have him retested once the appropriate on-the-job training is completed. The company says that this would be a hardship because there is no longer a mechanical apprenticeship program, though the union asserts that there is at least one mechanical apprentice.

It is not clear to me, however, that affording grievant the requisite on-the-job training would be a significant burden on the company. Moreover, it is hard to envision how the company's violation of the CAG guidelines could otherwise be redressed. Thus, I will grant the union's request to return grievant to the program, and to administer a lubrication theory TKQ after he has had the appropriate on-the-job training.

AWARD

The grievance is sustained. The company will take the action detailed in the last two paragraphs of the opinion.

s/Terry A. Bethel
Terry A. Bethel
November 29, 1997

<FN1> I need not resolve the company's claim that the parties could not have intended an on-the-job training requirement for each phase of the classroom training because that training includes geometry and plane trigonometry. Whether on-the-job training is required for those subjects is not an issue in this arbitration. I note, however, that I was impressed by Wagner's testimony that apprentices better understand the need to master such subjects when problems requiring that knowledge are pointed out to them in the field.