Award No. 954
In the Matter of Arbitration Between
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 1-V-082
Arbitrator: Jeanne M. Vonhof
October 21, 1998

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on August 28, 1998 at the Company's offices in East Chicago, Indiana.

APPEARANCES

Advocate for the Union:
A. Jacque, Chairperson, Grievance Committee
Witnesses:
R. Vercel, Grievant
M. Carrasaquillo, Griever
M. Martinez, Mechanic
Advocate for the Company:
P. Parker, Section Manager of Arbitration and Advocacy
Witnesses:
W. Boos, Senior Representative, Union Relations
J. Miskulin, Senior Manager of Maintenance, Plant 2 & 3 Blast Furnaces
Dr. T. Novack, Medical Doctor, Inland Steel Clinic

BACKGROUND:

The Union filed a grievance dated December 2, 1997, protesting the Company's failure to return the Grievant to work after back surgery. The Grievant was established as a mechanic at the No. 2 and 3 Blast Furnaces at the time this dispute arose. He has more than twenty (20) years' service with the Company.

The record shows that the Grievant had back problems for many years. On June 17, 1997 he had back surgery. He testified that the operation involved clearing up the compression on his nerves caused by two herniated disks. Dr. T. Novack, the Company's doctor, testified that the Grievant's surgery was more complicated than routine surgery on herniated disks, because he also has spondylosis, which is a degenerative, arthritis-like condition involving pressure on the nerve roots. According to Dr. Novack, the Grievant was treated for this condition as well as the herniated disks. In addition, the Grievant suffered a serious infection after his surgery, which required additional surgery. Dr. Novack also noted that the Grievant had had recurring back problems for many years prior to the surgery.

The Grievant testified that he was in the hospital for only two days after the initial surgery, and had only a few weeks of post-operative physical therapy. He stated that he progressed faster than expected and that he continues to perform exercises and lift weights. On November 11, 1997 he was examined by his doctor, Dr. Marc A. Levin, who released him to return to work on November 16, 1997 with the following restrictions:

-- no lifting more than 40 pounds
-- no repetitive bending or twisting.

In his note, Dr. Levin stated that the restrictions were to last eight (8) weeks. The Grievant presented these restrictions to the Company and was told that he could not return to work under these restrictions. The Grievant then returned to his doctor, described his job to the doctor and the doctor issued a note, dated November 16, 1997, stating that the Grievant could return to work without any restrictions.

Dr. Novack, the company's doctor, is Board-certified in surgery, a fellow in his profession's Occupational Medicine association, and served as Medical Director at U.S. Steel's Gary Works for fifteen (15) years. He testified that in his years of serving as a doctor in steel mills he became familiar with the work of mechanics or millwrights, and that in his experience it is a very active job which requires a lot of lifting of heavy parts and tools by hand and a lot of twisting and bending and use of the back muscles in repairing items. He also went into the plant and looked specifically at the work of the mechanics at the No. 2 and 3 Blast Furnaces. Dr. Novack said that he talked to the Grievant's doctor, examined the Grievant, and determined that it would be dangerous to his health for him to return to work without restrictions.

Therefore, in a memo dated December 2, 1997 Dr. Novack stated that the Grievant had a medical condition which limited his ability to:
-- single lift more than forty (40) pounds
-- repetitively lift (20 or more times per hour) more than 20 pounds, or
-- bend, twist and squat (these motions should not be a major requirement for any task assigned).
The Union filed the grievance on the same date. Dr. Novack stated that he ironed out these restrictions in conjunction with the Grievant's doctor. The record includes a letter from the Grievant's doctor dated January 22, 1998 releasing the Grievant to return to work with the same three restrictions contained in Dr. Novack's December 2nd letter.
The Grievant said that he did not see his doctor between November, 1997 and May 4, 1998. At that time the doctor released the Grievant to return to work with no restrictions, and the Grievant did so. He stated that he has had no problems performing all the work required by his job since his return to work.
The Company introduced the position description for the mechanic position at the Plant 2 and 3 Blast Furnaces. The description lists a wide range of duties involved in repairing equipment used in the plant. It rates the physical strength involved in the job as at level "D," the highest rating possible, with maximum lifting of up to 200 pounds. The description also states that mechanics are expected to perform tasks at above normal physical exertion more than one quarter of the time, and at normal exertion for three-quarters of their work time.
Mr. M. Martinez, Mechanic at the No. 2 Blast Furnace testified that he had very similar surgery on his back performed by the same doctor as the Grievant. He stated that his surgery was more complicated because he had five disks fused, and the Grievant had no fused disks, and only two disks repaired. Mr. Martinez stated that he was off work three months, returned to work with no restrictions, and has been able to perform all his work since returning to work. The Grievant testified that he was off work on other occasions and returned to work with restrictions.
Mr. M. Carrasaquillo, Griever, testified that he has several Mechanics employed at the No. 2 and 3 Blast Furnaces who perform little if any physically demanding work. He mentioned the inspectors, mechanics working in the spares area, and a Mobile Maintenance employee on medical restrictions brought into the department who did nothing but operate a fork lift for eight (8) hours per day during the relevant time period. According to Mr. Carrasaquillo, if an employee is injured at work, and the Company is paying benefits, the Company brings the employee back quickly, even with medical restrictions, in order to stop those payments, even in cases where the employee believes he or she is not ready to return to work. A different approach is taken with employees whose medical restrictions are not the result of occupational injuries, Mr. Carrasaquillo testified. He also stated that no mechanics perform all the jobs listed in the position description and many of the jobs are made easier by the use of mobile lifting and transporting equipment.
The Union stated in the third step minutes that the Grievant could have been assigned to perform work in the spares area, pallet rebuilding, skulling building rebuild work, grease work or assisting the machinist.
Mr. J. Miskulin, Section Manager for the Plant 2 and 3 Blast Furnaces, stated that much of the work of the mechanics is out in the field, where they must bend, twist, and work at all different heights. Mechanics must be able to work just about anywhere, often on an emergency basis, and many areas where they work are not serviced by cranes. A mechanic could not do the full range of the duties required of him under the restrictions placed upon the Grievant, according to Mr. Miskulin. He testified that many of the areas in which the Union contends the Grievant could have worked involve lifting heavy parts or tools, working at different heights, climbing, bending, stooping and squatting. There are no full-time mechanic positions for greasing machines, building up spare parts, inventory work, computer work or assisting machinists, he stated. Nor would it be reasonable for him to assign one mechanic to work a cherry picker for all the other mechanics, since it is more efficient to have mechanics on the job operate the cherry picker when they need it. He stated that the Grievant did not have sufficient seniority to claim an inspector's job. He also disputed the Union's contention that an employee from Mobile Maintenance spent all of his time in the department operating a fork lift. He stated that another mechanic to whom the Grievant compares himself can do bending, squatting and lifting; his sole restriction is that he cannot work around extreme heat.
The Arbitrator visited the part of the plant where the Grievant works and observed the mechanical work being done there. The Arbitrator lifted various tools and parts as part of this tour, and listened to descriptions concerning the work performed.
THE UNION'S POSITION

The Union contends that the real issue here is that all employees should be treated the same, with regard to temporary medical restrictions. There are 64 mechanics assigned to the No. 2 and 3 Blast Furnaces and the Manager determines how and where they are assigned. Therefore the department had control over the Grievant's assignments and could have made an assignment within his medical restrictions. The Grievant and other employees have been returned to work as mechanics with restrictions, or after similar back surgery, and therefore the Grievant was treated differently when he was not returned to work.

The Union relies upon Article 13.36.4 of the labor agreement, part of the seniority article, which states that an employee who cannot be assigned to the employee's established sequence, because of medical restrictions, may apply temporarily for entrance into his or her core pool and/or parent department where work is available within the employee's restrictions. The Union contends that the Company has an obligation to conduct a placement meeting with the employee and examine such possibilities at that time. According to the Union the Grievant could have been placed in the core labor pool or some other post if there was not work available in his department.

The Union argues that the labor agreement does not distinguish between temporary and permanent medical restrictions. The Union argues that it is not asking the Company to create work, but rather not to bring back one employee and not another when they have the same medical conditions. According to the Union the Grievant should have been permitted to return to work in November, 1997 or at least by January, 1998.

THE COMPANY'S POSITION

The Company argues that the restrictions were appropriate. According to the Company, Management is not interested in keeping employees off work, but rather wants to put them back to work, as long as it is safe to do so. The Company's doctor has more than fifteen years' experience in the steel industry and is very familiar with the operation the Grievant underwent. If the restrictions were appropriate, then the Grievant properly was kept off work, because there was no work meeting these restrictions.

The Company also argues that, having observed the work and read the position description, the Arbitrator must conclude that physical strength and significant physical exertion are essential parts of this job. Another factor is the location of the parts and tools, and where the mechanics' work is performed. Mechanics must retrieve and replace parts and tools at different heights; repair work also requires working at many different heights and angles. Thus, squatting, bending, and twisting are unavoidable.

The Company also takes issue with the Grievant's argument that because some employees have been returned to work with restrictions, the Grievant should have been treated the same way. According to the Company it does try to accommodate employees with temporary medical restrictions when possible, but has no obligation to create work for such an employee. The Company contends that the Union's arguments that because some employees with temporary medical disabilities have been returned to work, the Company must take the same action with regard to all such employees could chill the Company's efforts to bring back any injured employees.

As for the argument regarding Article XIII, the Company contends that the agreement puts the onus on the employee to request work in another sequence, which the Grievant did not do here. In addition, the Union has not established that there was work in another sequence which fit the Grievant's restrictions. The Company suggests that work in the labor pool is among the most difficult heavy physical work in the mill. The Company has an obligation to return employees to work only when it is safe to do so; here the Company contends that it was not safe to bring back the Grievant until May, 1998.

OPINION:

This is a case involving the Company's failure to return an employee to work under certain medical restrictions. The Union argues that the Grievant should have been returned to work without restrictions in November and seeks pay for November, 1997 through May, 1998. The Grievant had serious back surgery, a post-operative infection which required additional surgery, and months of rehabilitation and rest after the operations. The Grievant's doctor's orders changed several times during the relevant time period. The Grievant returned to work first with significant medical restrictions ordered by his doctor. When he was told that there was not work within those restrictions, he returned, only days later, with a note from his doctor lifting those restrictions. Dr. Novack has significant knowledge both about the Grievant's job and his specific medical condition as well as long-term experience as a medical director in a large steel mill. He testified that when an employee returns with restrictions lifted under these circumstances, it is important for the Company's doctor to investigate the lifting of the restrictions. This is a reasonable approach, since, faced with a choice between no income and no restrictions, an employee's doctor may feel pressured to return him to work sooner than the doctor really believes is medically appropriate, so that the employee will not be forced to spend more time without income. Dr. Novack talked to the Grievant's doctor and

testified that they agreed together on a set of restrictions for the Grievant. His testimony is supported by the note from the Grievant's doctor in January, 1998 which contained the same three restrictions described by the Company's doctor in his December memo. <FN 1> Therefore it was not unreasonable for the Company to refuse to reinstate the Grievant without any restrictions in November, 1997. Nor is there sufficient evidence that the three restrictions on the Grievant's return to work were inappropriate.

The Union also argues, however, that there was work available within the restrictions imposed upon the Grievant by the doctors. Especially through Witness Carrasaquillo, the Union tried hard to establish that the Grievant could have performed mechanics' work at the No. 2 and 3 Blast Furnaces which fit the restrictions against lifting and bending, twisting and squatting. The Arbitrator visited the worksites involved and listened while the Union witnesses described the work performed there. Not every physical motion required by the mechanic's job would have violated the Grievant's restrictions. But nearly all of the jobs I visited require motions which would violate his restrictions at least part of the time. Very little of the work is performed on workbenches at a level which would not require any bending. Much of the work involves bending, stooping, squatting or twisting the body; some of the work requires placing oneself in an awkward position while exerting physical force.

In addition, many of the jobs involve lifting objects which exceed the Grievant's weight restrictions. For example, one of the jobs which the Union contends that the Grievant could have done is working in the storage areas where tools and spare parts are kept. Some of the tools and the parts kept there clearly exceeded the weight limits imposed by the restrictions. In addition, in order to unload trucks, and to put away or retrieve many of these items the Grievant would have to either squat or bend, as even he acknowledged.

The job of the mechanics is one of the most varied in the department, in terms of duties, locations served and tools used. The Union suggests that because of this variety, the department could have found work within the Grievant's restrictions. The Union argues, for example, that much of the lifting work can be performed with the help of other employees, or with mobile cranes and other lifting and transporting devices. However, there are some locations and some jobs where none of these aids is available. In addition, some of the tools used in the mechanics' work, such as some of the impact wrenches and the chain falls, exceed the Grievant's weight limitations. Furthermore, the Grievant had multiple limitations, which made it more difficult to find work for him. For example, even if work could be located in which none of the tools or parts exceeded his weight limitations, it is very difficult to conceive how he would not have to bend or twist to perform the normal everyday job functions of a mechanic. The Company clearly was not required to create a new job every day for the Grievant by considering each tool and motion he would have to make, so that he would not run afoul of his medical restrictions. Enough of the normal work required of a mechanic at the No. 2 and 3 Blast Furnaces fell outside the Grievant's medical restrictions that it was reasonable for the Company to refuse to permit him to return to work as a mechanic while under these restrictions.

The Union points out that there are a few full-time mechanics positions which require little if any physical effort, such as the inspector jobs. However, the evidence shows that the Grievant clearly did not have the seniority to claim any of these jobs. The Union also has claimed that during the relevant time period an employee on medical restrictions from Mobile Maintenance was employed full time at the department, operating a forklift. However, the Company presented directly conflicting evidence on the scope of the employee's job duties. There was not sufficient evidence to conclude that other full-time positions are available, such as greasing the machines or assisting the machinists.

The Union argues strongly that while the Company has no absolute obligation to find work within an employee's medical restrictions, it does have an obligation to treat similarly-situated employees in the same way, and that it failed to do so in the Grievant's case. First, the Union argues that other employees with similar or more severe medical conditions were permitted to return to work faster than the Grievant. However, none of the other employees offered as comparisons by the Union had substantially the same medical conditions as the Grievant. Mr. Martinez had somewhat similar surgery, but Dr. Novack testified that the Grievant's surgery was more complicated. This testimony is supported by the fact that the same doctor who operated on both men released Mr. Martinez to return to work, without restrictions, after a much shorter time than the Grievant. Another employee could perform all the physical work, as long as he stayed out of extreme heat. The Grievant's restrictions on other occasions, when he was permitted to work, were not as extensive as his restrictions in 1998, considered as a whole. Furthermore, even if an employee returned to work with exactly the same restrictions as another employee, the work available in the department at any given time may vary.

Secondly, the Union asserts that Management tries harder to find work for employees with temporary medical restrictions who are injured at work than those suffering non-occupational illnesses or injuries. There was not sufficient evidence to support his assertion. Moreover, even if it were true, the Union has not pointed to any section of the Agreement which this practice would violate.

Thirdly, the Union asserts that under Article 13 the Company had an obligation to look for work in other departments for the Grievant. That section does permit an employee to seek such work, if work within his or her medical restrictions cannot be found in his normal sequence or department. The provision states that the employee "shall be allowed to temporarily apply" for such work. This language requires that the employee, not the employer, initiate action by filing an application. That did not occur here.

In conclusion, the Union has not been able to establish that the Company violated the Agreement by failing to find work for the Grievant which was within his significant medical limitations for the six month period at issue. Therefore the grievance must be denied.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Approved by Umpire Terry A. Bethel

Decided this 21st day of October, 1998.

<FN 1> The Grievant suggested that his doctor was coerced into making these restrictions by the Company's doctor. However, there was not sufficient evidence to support this conclusion.