

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration	)	Arbitrator's Opinion
between	)	and Award
	)	
ARCELORMITTAL USA	)	Grievance 10USW0015
	)	
and	)	Award Issued:
	)	January 17, 2011
	)	
UNITED STEELWORKERS	)	
LOCAL UNION 2911	)	

Subject: Severance Allowance - Article Eight Section C of the September 1, 2008 Agreement

Appearances of Counsel:

Peter D. Post, Esquire  
On behalf of the Company

Pete S. Visnic, Esquire  
On behalf of the Union

This grievance from the Weirton Plant claims that on or about February 7, 2010 the Company reduced manning levels and thereby permanently discontinued substantial portions of recognized departments, and that the Company has not demonstrated reasonable plans or expectations to return those departments to their original manning levels. As filed, the grievance seeks severance allowance opportunities in an amount equal to the number of employees permanently reduced from their departments,<sup>1</sup> and it alleges a violation of Article Eight Section C of the September 1, 2008 Agreement.

Article Eight Section C of the 2008 Agreement provides in relevant part as follows:

ARTICLE EIGHT – EARNINGS SECURITY

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Section C. Severance Allowance

1. Right to Severance Allowance

Employees meeting the conditions outlined below shall, upon request, receive a Severance Allowance as described herein.

2. Eligibility

In order to be eligible for a Severance Allowance an Employee must:

- a. at the time s/he requests such Allowance, have accumulated three (3) or more years of Continuous Service, and
- b. be on layoff (other than voluntary layoff):
  - (1) for six (6) consecutive months, or in any twelve (12) month period be offered, under the terms of the Agreement, less than 520 hours of straight time work, or
  - (2) due to a Permanent Closure as defined in this Section.

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<sup>1</sup> At Step 2, and in arbitration, the Union also requested that if severance allowances were granted then employees who transferred to the Warren Plant should be permitted to be recalled to the Weirton Plant to fill vacancies created by such severances.

## 6. Definitions

For the purpose of this Section:

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c. Permanent Closure means the permanent closure of a plant or permanent discontinuance of a department of a plant or substantial portion thereof. In addition to an announced Company decision providing therefore, a Permanent Closure shall be deemed to have occurred whenever the Company is not operating the subject plant, department, or substantial portion thereof and cannot clearly demonstrate reasonable plans or expectations for a re-start in the immediate future.

Attached to this grievance was a chart depicting the reductions in manning levels at the plant from December 31, 2009 to March 1, 2010. The chart reflected the following:

Promotional Sequence	Position	December 31, 2009 Staffing Level	March 1, 2010 Staffing Level	Change
Tin Mill	MTM Block	75	40	35
Maintenance	MTE Block	51	28	23
Strip Steel Maintenance	MTM Block	46	24	22
Maintenance Engineering & Utilities	Maintenance Technician – Segment Repair – Machine Shop Department	6	3	3
Logistics	Car Repair Dept.	7	3	4
	Diesel Shop Dept.	7	3	4

At the arbitration hearing the Union offered testimony and exhibits to establish that the above noted changes in staffing levels equated to a 47% reduction in MTMs and a 45% reduction in MTEs in Tin Mill Maintenance, a 48% reduction in MTMs in Strip Steel Maintenance, and reductions of 50% in Maintenance Technician-Segment Repair-Machine Shop and 57% in both Maintenance Technician-Logistics-Car Repair and Maintenance Technician-Logistics-Diesel Shop in Maintenance Engineering and Utilities (MEU). The Union further offered evidence that, based on active employee headcount reports and not including voluntary layoffs or Trainers, the employee count in the plant had been reduced by 16% (from 852 to 715) from December 2009 to March 2010, with the Tin Mill experiencing a loss of 14.7% and Strip Steel experiencing a loss of 12.2% and MEU experiencing a loss of 8.2%.

The Union contends that, in light of the depressed economy, it is unlikely that affected employees reduced from their departments will be recalled rather than be subject to permanent elimination from their departments, and therefore in accordance with Article Eight Section C-2 of the Agreement severance allowances are due in an amount equal to the number of employees so permanently displaced.

The Company maintains that Article Eight Section C of the Agreement does not require severance allowances to be offered in the present circumstances because, although there have been some reductions in salaried and bargaining unit positions to make the Tin Mill and plant more competitive and reflect demand, no permanent closures or discontinuances as envisioned by Article Eight Section C-6-c have occurred or could be deemed to have occurred. The Company insists that the plant has three departments: Tin Mill, Strip Steel, and Maintenance Engineering and Utilities (MEU); it denies that Tin Mill Maintenance (where 58 of the 91 Union-cited manning reductions occurred) is a separate department. The Company offered charts reflecting that, between December 31, 2009 and March 1, 2010, the number of employees in the Tin Mill Department declined by 56 (or approximately 15%, from 381 to 325), the number of employees in the Strip Steel Department declined by 19 (or approximately 12% from 155 to 136) and the number of employees in the MEU Department declined by 12 (or approximately 8% from 146 to 134). The Company also offered the following chart, based on headcount reports, depicting the numbers of plant employees in the months of January 2010 through November 2010:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov
At Work	788	675	679	679	704	709	712	729	753	763	766
Voluntary Layoff	71	146	143	145	124	120	87	68	53	52	47
Involuntary Layoff	0	35	35	35	33	31	56	40	26	18	18

The Company stresses that the Tin Mill Department and the Strip Steel Department and the MEU Department have all continued to operate with no facilities or lines closed or discontinued as a consequence of the fluctuations in manning levels related to business conditions. And, while the Company acknowledges that staffing levels declined in some lines of progression or promotional sequences in February 2010 to reflect the poor economy and demand, it denies that these reductions equated to a permanent discontinuance of a substantial portion of a department. The Company asserts, too, via witness testimony that its business plan for 2011 anticipates the recall of plant employees to virtually January 2010 levels.

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Article Eight Section C of the 2008 Agreement governs issues of severance allowance. It provides, in the context of this case, that to be eligible for a severance allowance an employee must have accumulated at least three years of continuous service and “be on layoff (other than voluntary layoff) ... due to a permanent closure” as defined in Article Eight Section C-6-c. Article Eight Section C-6-c defines permanent closure as “the permanent closure of a plant or permanent discontinuance of a department of a plant or substantial portion thereof”, and provides that a permanent closure “shall be deemed to have occurred whenever the Company is not operating the subject plant, department, or substantial portion thereof and cannot clearly demonstrate reasonable plans or expectations for a re-start in the immediate future.”

No dispute exists that, in February 2010, the number of employees on involuntary layoff from the plant increased significantly. And, it was established in evidence that from December 31, 2009 to March 1, 2010 the cited Tin Mill and Strip Steel and MEU promotional sequences or lines of progression experienced staffing reductions ranging from 45% to 57%. There was also evidence, though, that the maintenance staffing reductions were attributable to business demands and that all Tin Mill and Strip Steel and MEU operations continued in and after February 2010 and were not closed or discontinued. The number of employees at work in the plant was shown to have increased every month from April 2010 through November 2010.

It is clear that employees were displaced from the cited Tin Mill and Strip Steel and MEU promotional sequences or lines of progression in February 2010, in relatively large numbers as a percentage of those previously working in those promotional sequences or lines of progression. That these employees were adversely impacted through no fault of their own must be acknowledged. Nonetheless, for these employees to be eligible for severance allowances in accordance with the terms of Article Eight Section C they must have been laid off due to a “permanent closure” as defined in Article Eight Section C-6-c. That was not proven. These employees were not shown to have been laid off due to a “permanent closure” or “permanent discontinuance” of a department or substantial portion thereof. While the cited Tin Mill and Strip Steel and MEU promotional sequences or lines of progression experienced significant reductions beginning in February 2010, the record evidence is not found to support a conclusion that a

“permanent discontinuance of a department of a plant or substantial portion thereof” occurred or that the “the Company is not operating the ... department, or substantial portion thereof” as would be contractually required for affected employees to be eligible for severance allowances.

Accordingly, this grievance must be denied.

AWARD

The grievance is denied.

A handwritten signature in black ink, appearing to read "David A. Petersen", written in a cursive style.

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David A. Petersen, Arbitrator