

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration)	Arbitrator's Opinion
between)	and Award
)	
ARCELORMITTAL USA)	Grievance 10-08
)	
and)	Award Issued:
)	December 30, 2011
)	Case 50
UNITED STEELWORKERS)	
LOCAL UNION 9462)	

Subject: Incumbency – Labor Grade 5 Senior Operating Technician v. Labor Grade 4
Maintenance Technician Mechanical

Appearances of Representatives:

Barry Simon, Esquire
On behalf of the Company

Lew Dopson, Sub-District Director
On behalf of the Union

BACKGROUND

10-08

In this grievance from the Maintenance Department at the Conshohocken Plant, as filed, it is charged that Grievant was improperly denied his bid to a Mobile Equipment Mechanic MTM assignment while a less senior employee was awarded this assignment. A violation of the September 1, 2008 Agreement is alleged.

At the arbitration hearing it was established that a bid for two Mobile Equipment Mechanic MTM assignments was posted in December 2009, and that all MTM (i.e., Labor Grade 4 Maintenance Technician Mechanical) incumbents and all SOT (i.e., Labor Grade 5 Senior Operating Technician) incumbents could sign this posting. The bid sheet also recited: "If you are a SOT, and are the successful bidder for this posting, and you currently have a red circle rate¹, your red circle rate will go away with the acceptance of this assignment." Grievant, who possessed a red circle rate and a seniority date of June 3, 1991, signed this posting. Also signing this posting was Employee CR (an MTM with a seniority date of July 20, 1992), Employee BS (a SOT with a seniority date of July 8, 1992), Employee PP (an MTM with a seniority date of August 2, 1993), Employee ES (a SOT with a seniority date of March 31, 1997), Employee DR (an MTM with a seniority date of December 8, 2006, and Employee GK (an MTM with a seniority date of March 29, 2004). Grievant was offered one of these assignments but chose not to sign the acceptance letter due to a dispute over whether he was an incumbent SOT or an incumbent MTM, and thus whether he was entitled to retain a red circle rate on the Mobile Equipment Mechanic MTM assignment. Employee CR accepted one of these assignments and, as an MTM with a red circle rate, CR carried his red circle rate with him. Employee BS declined, as did Employee PP and Employee ES. Employee GK accepted one of these assignments; GK was an MTM without a red circle rate. Employee DR was not offered one of these assignments because more senior members of the bargaining unit accepted the available vacancies.

The Union asserts that the Company improperly considered Grievant as an incumbent SOT rather than as an incumbent MTM when it was filling these two Mobile Equipment Mechanic MTM assignments, and that as an MTM Grievant was entitled to retain a red circle rate of \$1.49 upon his acceptance of one of these Mobile Equipment Mechanic MTM assignments. The Union recalls that Grievant was hired at the plant, then owned by Lukens, on June 3, 1991 and he worked as a Millwright. Grievant continued to work at the plant through a series of changes in the ownership of the facility (i.e., Lukens, Bethlehem, ISG, ArcelorMittal). It notes that under the Bethlehem 2000 Basic Labor Agreement Grievant was a Mechanical Repair AA (Grade H), with occasional temporary assignments as a Group Leader Mechanical AA (Grade J), and under the ISG 2002 Basic Labor Agreement Grievant was a Labor Grade 4 MTM who, in May 2003, was assigned as a Labor Grade 5 SOT and as such received a red circle rate of \$2.41 in comparison to the Labor Grade 4 MTM red circle rate of \$1.49. The Union accepts that Grievant has been performing the SOT position in the Maintenance Department since May 2003, that he has been

¹ It was stipulated that red circle rates were applicable to so-called legacy employees at the plant who were former Bethlehem employees there and were required to formally reapply to become, and became, ISG employees when ISG acquired the plant. ArcelorMittal acquired the plant thereafter.

paid as an SOT, that he has been listed on posted SOT Overtime Tracking sheets, and that although Grievant has questioned his incumbency and maintained he was an MTM he has never previously grieved that he is an incumbent MTM rather than an incumbent SOT. Nonetheless, the Union insists that Grievant never bid nor was awarded nor otherwise went through the key selection process to become an incumbent SOT, and therefore Grievant was an incumbent MTM at the time he signed the posting for these Mobile Equipment Mechanic MTM assignments and he was entitled to accept one of these assignments and carry a \$1.49 red circle rate with him.

The Company agrees that if Grievant is an incumbent MTM, and not an incumbent SOT, then he would have been entitled to accept one of these Mobile Equipment Mechanic MTM assignments and carry a \$1.49 red circle rate. However, the Company asserts that Grievant was an incumbent SOT at the time he signed this December 2009 posting and thus he would not have been entitled to retain a red circle rate if he had accepted one of these positions. It notes that Grievant had worked and been paid as a Labor Grade 5 SOT in the Maintenance Department since May 2003. The Company denies that, under these circumstances, Grievant can now legitimately claim he is an incumbent MTM rather than an incumbent SOT.

Grievant testified and confirmed that in May 2003, with the ownership of the plant having been transferred from Bethlehem to ISG, he was required to reapply to become an ISG employee. Grievant stated that he applied to be a Labor Grade 4 MTM, not a Labor Grade 5 SOT. He recalled that he worked his first three days at ISG as an MTM, and beginning with his fourth day of work for ISG and continuing through the present he was assigned to perform the SOT position. Grievant stressed, though, that he never bid nor was awarded nor otherwise went through the key selection process to become an incumbent SOT. He insisted he was and remains an incumbent MTM. On cross-examination, Grievant acknowledged that even his first paycheck from ISG reflects he was paid at the Labor Grade 5 SOT rate and not at the Labor Grade 4 MTM rate.

The Manager of Human Resources/Labor Relations testified that Grievant, as the qualified bidder with the greatest plant service, was offered one of the two Mobile Equipment Mechanic MTM assignments posted in December 2009. The Manager recalled, though, that Grievant refused to sign the acceptance letter because he believed he was an incumbent MTM and was entitled to carry a \$1.49 red circle rate with him. The Manager believed Grievant was incumbent SOT, and had been so since at least May 2003, and thus would not be eligible to retain a red circle rate on the assignment being awarded. The Manager also observed that on Grievant's ISG Employment Application, dated April 23, 2003, there is no mention of MTM or SOT; in the section questioning the type of employment desired, Grievant checked only that he was applying for "Full-Time" and "Maintenance". On cross-examination, the witness acknowledged she has no records of Grievant being awarded incumbency as an SOT or going through the key selection process. However, the witness stressed she does not have access to ISG records and that in contrast to the present not all employees who became SOT's in the past went through the key selection process.

FINDINGS

Grievant bid on a Mobile Equipment Mechanic MTM assignment posted in December 2009, and the evidence was the Company offered Grievant such an assignment off this posting but Grievant chose not to accept it because he believed he was an incumbent MTM and entitled to receive a \$1.49 red circle rate on this assignment. The Company believed Grievant was an incumbent SOT and by the terms of this posting was not entitled to retain a red circle rate. Grievant decided not to risk taking the Mobile Equipment Mechanic MTM assignment and losing his entitlement to a red circle rate if he did not prevail on a subsequently filed grievance challenging the Company's belief that he was an incumbent SOT and not an incumbent MTM.

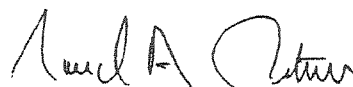
It was established on this record that after Grievant applied for employment at the then ISG-owned plant and began working there in May 2003, and through the time Grievant bid on this Mobile Equipment Mechanic MTM assignment in December 2009, Grievant worked and was paid as a Labor Grade 5 SOT. In and since May 2003 Grievant has received the Labor Grade 5 SOT rate of pay, not the Labor Grade 4 MTM rate of pay. And, contrary to Grievant's assertion in his testimony, nothing on his ISG Employment Application reflects that he applied to become an incumbent MTM rather than an incumbent SOT. ISG records were reported to be unavailable for the purpose of clarifying whether Grievant was hired as an MTM or SOT, and no bid document was offered to confirm whether Grievant was an incumbent MTM or SOT. Notably, too, Grievant questioned but never previously filed a grievance over the Company's view that he was an incumbent SOT and not an incumbent MTM.

In these particular circumstances it is deemed reasonable to rely on the hard evidence that in and after May 2003 Grievant was consistently paid as a Labor Grade 5 SOT whether he worked for ISG or ArcelorMittal, that he appeared on SOT Overtime Tracking sheets posted in the plant, and that he admittedly never filed a grievance to verify his belief that he was an incumbent MTM rather than an incumbent SOT as it outwardly appeared in all respects. Based on the evidence presented, it is determined that Grievant was properly regarded as an incumbent SOT when he bid on the Mobile Equipment Mechanic MTM assignment in December 2009.

Therefore, this grievance will be denied.

AWARD

The grievance is denied.



David A. Petersen, Arbitrator