

Award No. 688
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 20-N-21

Appeal No. 1292

Arbitrator: Bert L. Luskin

July 24, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on June 18, 1980. Pre-hearing briefs were submitted on behalf of the respective parties.

APPEARANCES

For the Company:

Mr. R. T. Larson, Labor Relations Coordinator

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations

Mr. Robert H. Ayres, Manager, Labor Relations

Mr. J. J. Santini, Assistant Superintendent, Central MEchanical Maintenance Department

Mr. G. J. Marinello, Superintendent, Assigned Mechanical Maintenance Department

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. R. Kirincic, Senior Training Coordinator, Assigned Mechanical Maintenance Department

Ms. K. Kovach, Claims Administrator, Insurance Section, Personnel Department

Mr. K. Scott, General Foreman, Boiler Shop, Central Mechanical Maintenance Department

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. J. C. Porter, Secretary

Mr. Michael Mezo, Griever

Mr. Peter Jurasevich, Grievant

BACKGROUND

Peter Jurasevich was employed by the Company in January, 1972. Jurasevich completed an apprenticeship and became a journeyman boilermaker in the Boiler-Fabricator Shop (a section of the Central Mechanical Maintenance Department) on September 25, 1975.

Commencing on May 17, 1978, the Company posted a plant-wide bidding notice for a one-week period (May 17 to May 23, 1978), offering ten permanent craft vacancies to be filled in the Apprentice Boilermaker occupation in the Field Forces Department. The Company received more than sixty bids. The Company thereafter announced the selection of the ten persons for the posted vacancies. Jurasevich complained to Union officials that he had attempted to bid for one of the boilermaker vacancies and had been denied the opportunity to do so by someone in the Company's Personnel Department. Jurasevich contended that he had been informed by a member of the Personnel Department that she could not accept a bid from a journeyman boilermaker for a vacancy in the Apprentice Boilermaker Classification. The Company could find no record of any bid having been received from Jurasevich, and there was no record of any attempt on Jurasevich's part to submit a bid for one of the posted vacancies.

Jurasevich thereafter filed a grievance contending that the Company had violated applicable provisions of the Collective Bargaining Agreement when it denied Jurasevich the opportunity to bid on a posted permanent craft vacancy on and after May 17, 1978. The grievance requested that Jurasevich be allowed to bid on the vacancy and to have his bid processed in accordance with the provisions of Article 13. He further requested that he be credited with all work experience pursuant to the provisions of Article 6, Section 2, of the Job Description and Classification Manual.

The Company denied the grievance and it contended that it was procedurally defective and should be dismissed since Jurasevich had by-passed the contractual requirements that the grievance be initially submitted orally. The Company thereafter contended that the grievance should be denied on its merits because of the applicable provisions of the Agreement which would serve to preclude a journeyman in a craft from bidding down to an apprentice position for training in the same craft in which he had already achieved journeyman status.

The Company contended that Jurasevich was attempting to by-pass and to circumvent the Company's right to determine its needs in the Apprentice Boilermaker Classification, and the Company contended that Jurasevich was using the bidding procedure to achieve a transfer within the same classification instead of following the transfer provisions of the Collective Bargaining Agreement. The Company denied that there existed any type of custom or practice which would serve to support the grievant's contentions in this case. The Company contended that the Union had cited the disposition of a grievance in the oral stage as an alleged precedent for establishing the existence of a Local Working Condition. The Company contended that the Collective Agreement between the parties specifically prohibits the use of an agreed-upon resolution of an issue between the parties (in the oral stage) as having subsequent precedential value. The issues arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

Jurasevich did appear in the Personnel Department with the intention of filing a bid for one of the ten posted vacancies. He did speak with an Employee Counselor. It would appear from all of the evidence in the record that there was a misunderstanding concerning Jurasevich's recruit arising out of a failure of communication. Jurasevich did use the term "transfer" when he intended to use the term "bid," and the Counselor informed him that transfer requests were not being taken since the posting involved applications for entry into apprentice boilermaker positions. The Company was almost immediately thereafter made aware of the fact that Jurasevich did desire placement into the apprentice boilermaker program in the Field Forces Department. The misunderstanding could have been corrected, and the arbitrator must find that Jurasevich's request for placement in the apprentice boilermaker program should not now be denied solely on the basis of the misunderstanding that took place in May, 1978.

Jurasevich registered an immediate complaint with Union officials. Discussions took place between Company and Union officials shortly thereafter. The written grievance was filed and, in the third step of the grievance procedure, the Company contended that the contractual procedures had not been followed since Jurasevich had failed to orally register his complaint. The arbitrator will find that there was substantial compliance with the grievance procedures. The grievance was answered and the Company was not prejudiced in any way by the submission of the written grievance. The issue will, therefore, be determined on the basis of the merits thereof.

The basic facts are not in dispute and have been set forth in the background portion of this opinion and award. Jurasevich sought a transfer from the boilermaker fabricator job to the position of apprentice boilermaker in the Field Forces Department. Jurasevich was fully aware of the applicable contractual language which would have required that he be, almost immediately, placed in the journeyman position receiving the journeyman's rate of pay if his bid request had been granted. Jurasevich clearly sought a "transfer" within the same craft as a journeyman from one department to a different department by attempting to use the bidding procedure as a vehicle to accomplish that transfer instead of asserting his seniority rights for transfer under the applicable provisions of the Agreement. If Jurasevich had sought a transfer as a journeyman boilermaker to the same classification in a different department, his request could have been granted only if there was a vacancy in the position which he sought. Since the Company had not posted any vacancy for journeymen boilermakers in the Field Forces Department, any such request for transfer would have had to be denied or held in abeyance until such time as a vacancy existed in the boilermaker classification.

Although the Union contended that Jurasevich was denied the right to enter the apprentice classification because he was "over qualified," the facts do not support that contention. Jurasevich was denied the right to enter the apprentice boilermaker classification because he had already completed that same apprentice program in 1975. The movement of Jurasevich into the apprentice program with the resulting immediate movement back to journeyman status, would have served to deny the Company what it sought to achieve when it posted the apprentice vacancies.

There is evidence in this record that in May, 1978, there were sixty-eight journeymen boilermakers and eighteen apprentices in the Field Forces Department. Eleven journeymen would have achieved thirty years of service in 1978. By 1982, when the newly selected ten apprentices would have become journeymen, approximately twenty-eight of those sixty-eight journeymen would have achieved thirty years of service. The Company had no need (in May, 1978) for additional journeymen in the Field Forces Department, and it was using the apprentice program to fill its needs in the precise manner contemplated by the parties when the apprentice program was initially developed. The Company had every right to post apprentice vacancies when it needed apprentices, and the Company should not have been required to accept the services of a

journeyman boilermaker to fill a boilermaker apprentice position under circumstances where that apprentice position would have almost immediately upgraded to a journeyman position.

The position adopted by the Company in this case did not result in a violation of a local working condition. The evidence will not support a conclusion or finding that the Company had, in the past, permitted a journeyman to bid into the apprentice program designed to train journeymen in the same craft occupation. This Company has, in the past, permitted journeymen from one craft to enter the apprentice program for a different craft. That would not, however, serve to establish a local working condition which would have permitted Jurasevich to assert a claim that he could move from journeyman status to apprentice status within the same craft.

The position adopted by the Company in this case did not constitute a violation of any of the seniority provisions appearing in Article 13 of the Collective Bargaining Agreement. Jurasevich did not request a "transfer" based upon seniority principles, and there was no journeyman's position available in the Field Forces Department at that time.

It should be noted that subsequent to the filing of the grievance and prior to the hearing in this case, Jurasevich was able to effectuate a transfer to a boilermaker journeyman position in the Central Mechanical Shop.

The provisions appearing in Appendix G (Memorandum of Understanding on Apprenticeship) clearly provides that the objective of apprenticeship training is to provide a full and fair opportunity for achievement of "full craft status" to interested, qualified employees and, in addition thereto, to "provide the Company with qualified craft personnel." Neither of those objectives could have been achieved by granting Jurasevich's request. He already had "full craft status," and there would have been no increase in the total number of qualified craft employees. Granting Jurasevich's request would merely have reduced the number of apprentices from ten to nine. Appendix G 3 requires that apprenticeship vacancies be filled on the same basis as other permanent vacancies. That same provision refers directly to the right of employees to avail themselves of intra-plant transfers if they desire an opportunity to participate in the apprenticeship training program. In that same Appendix the parties agreed that the purpose of an apprenticeship training program "is to train and qualify individuals to perform the assignments of a given craft" Appendix G 3 provides in part that the present practices of the Company with respect to the allowance of advanced credit in any apprenticeship program based on related training and experience "... shall be continued."

On January 31, 1979, Inland Steel Company became a party to a new Agreement reached by the coordinated steel companies and the Union for apprenticeship training programs. By virtue of the provisions of that Agreement, Jurasevich's request would have been denied. The fact remains, however, that the 1979 Agreement does not have retroactive application and the issue in this case must be determined on the basis of the contractual language (and any established local condition) that may have existed at the time that the bids were posted in May, 1978, and the Jurasevich grievance was filed.

It is evident that Jurasevich was seeking to accomplish by indirection what he could not accomplish directly by means of the application of his seniority rights. He did not seek additional training or training in a different craft. He sought to circumvent the normal, ordinary seniority transfer procedures by asserting seniority for attempted entry into an apprentice program that he had already completed. If his request had been granted, he would never have served as an apprentice since (by Contract) he would, almost immediately, have been upgraded to journeyman status and the Company's desire to avail itself of the services of an apprentice would have been denied to the Company. The Company has the right to determine its needs and requirements. It believed that it needed the services of ten apprentices in the Field Forces Department in the boilermaker classification. The Company could not be required to fill its need for ten apprentices by the appointment of nine apprentices and the transfer of one journeyman.

The issue in this case is not unique. Inland Steel Company had permitted a journeyman from one craft to enter the apprentice program in a different craft. The Company had not, however, in the past, permitted a journeyman from one craft to bid into an apprentice vacancy for the same craft as a means of effectuating a transfer from one department to a different department. The Contract permits employee transfers when vacancies arise, and Jurasevich had every right to seek entry into the boilermaker classification in the Field Forces Department (or in any other department where boilermaker journeymen are employed) providing he followed the contractual procedures for effectuating a transfer.

A similar issue arose at United States Steel Corporation's Fairless Works (United Steelworkers of America, Local No. 4889). Grievance No. EFS-72-121 was heard in arbitration by Assistant Chairman McDermott, and on March 8, 1974, an award was issued in case No. USS-9738. The award was approved on behalf of the Board of Arbitration by Chairman Garrett. That grievance was denied on the basis that it was premature

and asked for an advisory opinion about future conditions which may or may not happen. That issue concerned itself with the right of journeymen welders to claim welder apprentice positions and the arbitrator (after dismissing the grievance without expressing an opinion on the merits) made the following statement:

"That introduces the other and perhaps more significant defect in this grievance. All grievants already were journeymen Welders and, so far as this record shows, had been for some time. As craftsmen they would have no claim to an apprentice position."

Although the issue was determined on other grounds, the above-quoted opinion expressed by Assistant Chairman McDermott coincides with the opinion of this arbitrator based upon his interpretation of all of the applicable provisions of the Collective Bargaining Agreement that was in force and in effect between the parties at the time that this grievance arose.

The arbitrator must, therefore, find that the Company did not violate any provision of the Agreement when it did not permit the grievant to fill an apprentice vacancy in the boilermaker classification in May, 1978. For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 688

Grievance No. 20-N-21

The grievance of Peter Jurasevich is denied.

/s/ Bert L. Luskin

ARBITRATOR

July 24, 1980