

In the Matter of the Arbitration Between

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INLAND STEEL COMPANY )

AND )

UNITED STEELWORKERS OF AMERICA )  
AND ITS LOCAL UNION NO. 1010 )  
\_\_\_\_\_ )

) Grievance No. 25-N-40

) Appeal No. 1309

) Award No. 708

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on October 14, 1981. The parties filed pre-hearing briefs that were exchanged between them in accordance with the established procedures.

APPEARANCES

For the Company:

Mr. Henry M. Thullen and

Ms. A. R. Waintroob, Attorneys for the Company

Vedder, Price, Kaufman and Kammholz, of Counsel

Mr. R. H. Ayres, Manager, Labor Relations

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations

Mr. R. B. Castle, Senior Representative, Labor Relations

Mr. R. Vela, Administrative Assistant, Labor Relations

Mr. J. M. Scheffers, Director, Training Department

Mr. D. O'Connell, Electrical General Foreman, No. 7 Blast Furnace

Mr. R. Marwitz, Electrical General Foreman, 80" Hot Strip Mill

Mr. D. McGee, Supervisor, Hourly Assessment, Training Department

Mr. R. Wood, Staff Representative, Hourly Assessment, Training Department

Mr. M. M. Roglich, Senior Representative, Labor Relations

For the Union:

Ms. Patti Seehafer, International Representative  
Mr. Theodore J. Rogus, International Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee  
Mr. Araldo, Manzo, Griever  
Mr. Michael Mezo, Griever  
Mr. Bobby J. Thompkins, Griever  
Mr. Ray LaPosa, Assistant Griever  
Mr. Joseph G. Timmons, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Joseph G. Timmons was employed by the Company on March 25, 1960. Timmons entered the electrical sequence at the 80" Hot Strip Mill. He progressed through all of the various lower-rated classifications, and he eventually entered the apprentice program for the motor inspector classification. He completed his apprenticeship and he became a standard motor inspector. In 1969 Timmons qualified for the classification of mill electrical control operator (MECO). The MECO classification is a position rated a job above the craft job of motor inspector.

In 1979, Timmons took a test preliminary to entry into the classification of electrical technician. Since 1966 all applicants for entry into the electrical technician classification at the 80" Mill had been required to take written tests. The tests had been revised from time to time whenever new equipment had been added or when some equipment had been abandoned or removed. The last revision to the test

was made in 1975, and since that date eighteen persons have taken the test and ten have successfully passed it. Timmons was informed that he had failed to pass the test and that he had scored 58 percent out of a possible 100 percent. The test was an essay-type test, and when Timmons was informed that he could receive counseling and could take the test over again at a later point in time, he did not respond to either proposal. He thereafter filed a grievance on June 22, 1979, contending that the technician's test does not show or test the ability of the grievant to perform the technician's job. The grievant contended that the test does not relate the grievant's ability to be trained for the next higher level job (technician), and he contended that questions on the test are not job-related or relevant to the everyday duties of the technician. The grievance requested that Timmons be given a test that is job-related and that measures the ability of an employee to perform the technician's occupation. The grievance contended that the Company had violated Article 3, Section 1, and Article 13, Section 1, of the Collective Bargaining Agreement. The Union thereafter contended that the Company had violated Appendix F of the August 1, 1977, Collective Bargaining Agreement.

The Union contended that the Company had failed to meet the testing criteria set forth under Appendix F of the Collective Bargaining Agreement since the test was not job-related and did not measure ability to absorb knowledge on that position. The Union contended that, although most of the test questions were admittedly job-related, they did not concern the everyday functions and their emphasis was not functionally directed toward the grievant's ability to absorb knowledge or train on the technician occupation, and, instead, the test served to test his actual, immediate knowledge of that position. The Union called attention to the inclusion of three

questions in the test which it contended are neither job-related nor do they fairly or accurately serve to measure the grievant's ability to learn or to actually perform the general scope of the duties of the technician's classification.

The Company contended that every question on the test was job-related and was designed to measure what the applicant knew rather than attempting to determine the applicant's ability to learn. The Company contended that the actual job knowledge should have been acquired during the applicant's progression through the lower-rated positions in the sequence and other aspects of the job should have been learned while the applicant was completing the craft program. The Company contended that the test is in effect a certification examination designed to determine whether the applicant has the knowledge to perform the job when assigned to the job.

The Company contended that Timmons was advised as to the proper method of responding to the questions. The Company contended that he was informed of the time limits, the availability of counseling and the availability of the test administrator in the event that Timmons required assistance with respect to any testing procedure or specific items on the test. Timmons was given the prints that he may have required, and he was informed that he could and should use the prints (if necessary) during the examination.

The Company contended that the test was reviewed by its Staff Representative of the Training Department who has advanced degrees in both industrial relations and industrial psychology. The Company contended that the representative spent several days analyzing the content of the electrical technician's job and discussing the duties of the job with supervision. The Company contended that in that person's opinion the three questions in dispute (22, 27a and 30) seek to determine knowledge that is required of the electrical technician. In the judgment of the Company's expert,

although an applicant for the job should have acquired a sufficient knowledge of the job to have scored 100 percent on the test, the Company established 70 percent as the minimum acceptable level of knowledge necessary to be able to satisfactorily perform the job.

The Company contended that throughout the grievance procedure the Union conceded that the test was job-related and it conceded that all questions, with the exception of the three in dispute, dealt directly with actual job knowledge which would normally be acquired by any applicant who has completed an apprenticeship program for the position of motor inspector and who has thereafter held the classification of MECO.

The Company contended that question 22 concerns itself specifically with the D. C. field application breaker for R5. The first part of the question concerns itself with the closing of the breaker and the conditions that would close the breaker. The second part of the question dealt with the 13 X relay and the point at which the relay functions. The Company contended that any applicant having spent any appreciable time in the performance of lower-rated jobs in the sequence would have gained enough knowledge to have correctly answered both parts of the question.

The Company contended that with respect to question 27a, it seeks to test the knowledge of the applicant with respect to the procedures to be followed in the event that power was lost to the 550 volt transformer or reactor. The Company contended that the answer is a relatively simple step procedure that should be known by anyone who has spent as many years as Timmons has spent moving through the lower-rated classifications in the sequence. The Company pointed to the fact that Timmons did not even attempt to answer that question.

The Company contended that question 30 concerns itself with a procedure that is to be followed when the crew leader is present at a time when an accident occurs. The Company contended that the safety manual sets out the procedure and that the question has been asked and answered on numerous occasions so that Timmons had opportunities to have become acquainted with the procedure and to have knowledge of a vital procedure that has to be followed if an accident occurs causing injury to a member of the crew working under Timmons' leadership.

The Company contended that even if Timmons had answered all three questions correctly, he would have scored 64 percent instead of the 58 percent with which he was credited. It contended that 64 percent is substantially below what the Company considers to be the minimal acceptable passing level of 70 percent.

The Company contended that the test is fair, reasonable and in complete compliance with the requirements appearing in Appendix F of the Collective Bargaining Agreement. The Company contended that the test was designed to measure actual immediate job knowledge rather than ability to learn or to be trained since it is essential that the technician know how to perform the job when he is assigned to it. The Company contended that there is no way in which special training can be provided to an applicant for that position.

The Company contended that electrical technicians act as crew leaders and are the main troubleshooters in the mill areas. On the first and third turns the electrical technician is the ranking employee in his area of work and no other assistance is available to him with the exception of the two electrical technicians working in the other two areas of the mill.

The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

## DISCUSSION

The electrician technician's position is a job class 24 position ranging two levels above a craft position. It ranks one level above the position of mill electrical control operator (MECO), a job that had been held by Timmons for ten years preceding the date of the test in question.

The 80" Hot Strip Mill covers three major areas. It includes the slab yard and furnace area, the roughing train area, and the finishing train. The mill is several thousand feet long and approximately 500 feet wide. The slabs and coils being processed can weigh up to 40,000 pounds. Approximately 6,000 tons of finished product are produced on each operating turn. The mill uses three sources of energy, electricity, oil and gas. Some of its motors exceed 500,000 horsepower, and the idling electrical power in the mill is 15 to 18 megawatts. Approximately 70 percent of the mill production is processed in the cold strip or in other subsequent operations.

There are thousands of circuits that are depicted on approximately 3,000 prints. Two different computers adjust the equipment speeds. As new electrical equipment is introduced, the electrical technician studies the manuals and other literature in order to become familiar with the electrical requirements and the repair needs for such equipment. Electrical breakdowns create serious operational problems, and adjustments and repairs must be completed as quickly as possible.

The electrical section of the Hot Strip Mill consists of employees in the electrical technician, MECO, motor inspector and vocational motor inspector classifications. Twenty-two bargaining unit employees work on the day turn, and eighteen work on each of the afternoon and midnight turns. One electrical technician is assigned to each shift. Each technician is assigned to a specific mill area. Techni-

cians rotate shifts weekly and they rotate areas of responsibility every two or three weeks.

The electrical technician on the afternoon and midnight turns is the highest electrical position in the mill. His primary function includes inspection, cleaning, adjusting and repairing of all controlled instrumentation, electronic equipment and auxiliary devices. He directs and he works with others in order to maintain all electrical equipment in the mill. He directs the MECOs and motor inspectors. He uses all electrical testing equipment. He consults blueprints and wiring diagrams, and he applies electrical, electronic and instrument theory. He lines-up power distribution systems to meet operating conditions and repairs, and he tests, locates trouble, and prepares administrative reports. He is, in effect, the leader and the person in charge of the electrical crew within his area of responsibility on his turn. He delegates jobs to MECOs and motor inspectors, and, if they cannot solve the problem, the electrical technician becomes involved in the problem and the resolution thereof. He uses test equipment and prepares various logs and report sheets. Although electrical technicians, motor inspectors and MECOs can become involved in the resolution of electrical problems, the position of electrical technician is distinguished from the other two classifications by the fact that the electrical technician should have acquired enough knowledge of the electrical systems and equipment to be able to direct the efforts of others in doing what becomes necessary to repair equipment or to avoid the long-term effects of an electrical failure.

The Union has charged the Company with a failure to comply with the test requirements set forth in Appendix F of the Collective Bargaining Agreement. It contended that the test given to Timmons for the position of electrical technician was not job related nor did it serve to determine Timmons' ability to absorb any training



which may be necessary in connection with the performance of the duties of that position. That provision of the Agreement is hereinafter set forth as follows:

"APPENDIX F

"MEMORANDUM OF UNDERSTANDING ON TESTING

"The September 1, 1965 Agreement provided that the parties shall conduct a study on the subject of Testing. The results of that study led to a special agreement dealing with Testing, identified as Appendix I of the August 1, 1968 Agreement. Based on the experience of the parties with that Appendix, the parties have agreed to certain revisions and hereby provide for the following:

"1. While the Union preserves fully its right to challenge through the complaint and grievance procedure the present or future use of tests, the Union and the Company agree that where tests are used by the Company as an aid in making determinations of the qualifications of an employee, such a test must in any event be a job-related test. A job-related test, whether oral, written or in the form of an actual work demonstration, is one which measures whether an employee can satisfactorily meet the specific requirements of that job including the ability to absorb any training which may necessarily be provided in connection with that job. A written test may not be used unless the job requires reading comprehension, writing or arithmetical skills, and may be used to measure the comprehension and skills required for such job.

"2. In the case of manning new facilities, transfers from one agreed-upon seniority area to another and transfers from one plant to another, the parties have agreed in specific provisions of the seniority section of the Basic Agreement that an employee may be required to have the ability to progress. To the extent that such a requirement is applicable, the parties agree that an employee may be tested as an aid in determining whether he can qualify for the job he is seeking and, in addition, is likely to become qualified to perform the next higher job in the line of progression or promotional sequence. Such testing shall be job-related as described above and specifically directed toward measuring the actual knowledge or ability that is a prerequisite to becoming satisfactorily qualified on the next higher job in the line of progression or promotional sequence, taking into consideration the normal experience acquired by employees in such promotional sequence.

"This provision is subject to the provisions in Article 13, Sections 6-c(1), -(2), -(3) and 21 of this Agreement.

"3. All tests shall be:

"(a) fair in their makeup and in their administration;

"(b) free of cultural, racial or ethnic bias.

"4. Testing procedure shall in all cases include notification to an employee of his deficiencies and an offer to counsel him as to how he may overcome such deficiencies.

"5. The provisions which shall apply in determining qualifications for entrance in Apprenticeship or other training programs are set forth in Appendix G of this Agreement."

The Union contended in the grievance that the Company had also failed to comply with the provisions of Article 3, Section 1, and Article 13, Sections 1, 2 and 3, of the Collective Bargaining Agreement.

Article 3, Section 1, is the Management Article of the Contract. There is nothing in this record that would indicate that the Company exercised its right to direct the working forces in such a manner as to discriminate against Timmons because of membership in or because of legitimate activities on behalf of the Union.

Article 13, Sections 1, 2 and 3 (Seniority), refers specifically to the application of seniority principles in promotions of employees. Ability to perform the work is a fundamental criteria, and promotional opportunities within a sequence are conditioned upon ability of an employee to perform the work in the next higher position in the sequence. Fundamental in the concept of sequential seniority is the requirement that a promotional sequence be arranged in a manner which will serve to provide opportunity for employees to become acquainted with and to prepare themselves for the requirements of the next higher rated position.

The Company has the unquestioned right to utilize a testing procedure (under certain circumstances) in order to determine whether an employee should or should not be promoted. That right is conditioned upon the application of the principles set forth in Appendix F of the Collective Bargaining Agreement. It would follow, therefore, that if the test was a contractually valid test and if Timmons was denied

the opportunity to promotion to the electrical technician position because he did not satisfactorily pass such a test, then and in that event the failure to promote Timmons to the position in question could not constitute a violation of Article 3, Article 13, or Appendix F, of the Collective Bargaining Agreement.

The Union (in the preliminary steps of the grievance procedure) conceded that 27 of the 30 questions that comprised the test were job related. The Union argued, however, that, although the test would serve as a test of actual immediate knowledge of the work required to be performed by the electrical technician, the test did not meet the requirements of Appendix F since it did not measure Timmons' ability to absorb knowledge or train on the technician occupation. The Union also contended that the test should be ruled to be invalid because the Company had not established, with any degree of certainty, that the test was either "valid" or "reliable." The Union also contended that the Company had failed to demonstrate that a score of below 70 is reasonably indicative of the fact that an employee is unable to meet the basic qualifications necessary for entry into the position in question.

The Company contended that the test was designed to measure actual, immediate job knowledge rather than ability to be trained. The Company contended that it is essential that the technician know how to perform the job at the time that he is assigned to the position. The Company contended that no training is provided to technicians after assignment since they must act as crew leaders and they are primarily responsible for all of the troubleshooting functions in the mill areas. The Company pointed to the fact that Appendix F required that a test must measure "ability to absorb training" only where training may necessarily be provided in connection with the job. The Company contended that since the bidder must have acquired the necessary knowledge prior to being tested for the job, his ability to absorb non-existent future training is an immaterial factor relating to the measure of his

qualifications. The Company contended that under those circumstances there is no need and no requirement for testing ability to absorb future training.

The Company contended that a number of umpires in the steel industry have consistently held that there is a distinction between tests designed to measure "present knowledge" and ability, and tests designed to measure "ability to be trained." The Company pointed to a series of umpire decisions (in steel) where arbitrators have held that tests should measure "ability to be trained" only where training will be provided as a part of the job. The Company pointed to the fact that the test in question was not a general intelligence test, nor was it an aptitude test. It pointed to the fact that the test was not designed to measure or to determine relative ability to perform a highly skilled job that would require apprentice training.

It is evident that the test questions were clearly designed as a form of "certification examination" in order to determine whether Timmons had the knowledge to perform the job at the time that he would have been assigned to the position if he had successfully passed the test.

Before taking the test Timmons was advised as to the proper method of responding to the questions. He was briefed on the time limits and was informed that counseling was available (as was the test administrator) in the event that Timmons had any questions concerning the testing procedure. He had been provided with a test booklet so that he had an early opportunity to determine the form and type of questions that would be asked on the test. He was provided with a series of ten prints that could be used in responding to a number of the questions that might require information from the prints before the questions could be answered. After the test had been scored Timmons was notified that he had failed to pass the test. He was informed that counseling was available to him and he was informed that he would have the opportunity to take the test again.

The three questions which Timmons contended were not job related, do, in fact, concern themselves with actual problems that can and that do develop in the day-to-day operations in the mill. They are neither abstract, nor hypothetical in nature. They have nothing whatsoever to do with training or ability to absorb knowledge. They do not measure aptitude.

Question 22 determines the applicant's knowledge of the function performed by the "D. C. field application breaker for R 5 on a start up." It also asks what will occur when a specific condition exists. A field technician who has progressed through the sequence should have had no difficulty answering that question. If any training was involved, the applicant would have received such training during his apprentice period for the position of motor inspector. His period of service as a motor inspector and his period of service as a MECO would have inevitably exposed him to the problem posed in the question and the correct answer to that question.

The second question in issue (question 27) asks for the procedure that should be followed to restore power to the slab yard if there is a loss of the 550 volt transformer or reactor. Timmons made no effort to answer that question. The question on its face is clearly and unequivocally job related. It is an event which occurs and it is a problem which can be readily resolved by the application of a sequence of movements which could have and should have been learned by an applicant while serving as a motor inspector apprentice, a motor inspector and as a MECO.

The third question in issue is a safety question involving the procedure that should be followed by the technician in the event that an accident occurs at a time that the technician is directing the work of a crew. That question has been posed and answered in the safety manuals. It has been the subject matter of training programs, and any employee who has worked in the department for almost twenty years

and who has held craft (and higher than craft positions) should have been able to outline the emergency procedures that must be followed. Since the technician leads the crew, it is the technician who would be responsible for the implementation of those procedures and to issue the directions to the crew to accomplish the required results.

All three questions in issue are clearly job related. The other 27 questions were concededly job related. Although they were never intended or designed to measure the ability to absorb training, there was no need to have the test perform such a function; nor is the test required (under Appendix F) to measure ability to absorb training. It should be noted that the applicable contractual language appearing in Appendix F requires primarily that the test be "job related." The test can be oral, written or "in the form of an actual work demonstration." It must measure whether an employee can "satisfactorily meet the specific requirements of that job..." It should measure ability to absorb training only if the training is "provided in connection with that job." Since the position of electrical technician requires reading comprehension and writing skills, the Company had the unquestioned right to establish a "written test" as a means to measure the comprehension and skills required for the position of electrical technician.

The Company was not required to establish "reliable data." The test was not designed to measure "aptitude" and it was not designed to measure or determine "ability to be trained." The test would have to be considered to have been a "valid" test in view of the fact that all thirty questions asked were job related and involved requirements of the job that could and should have been acquired by training in the motor inspector occupation and by the actual job performance and familiarization with the work achieved by an applicant who has progressed through the lower positions in

the sequence. The grievant was seeking entry into the top position in the sequence where further training is not available since the employee entering the classification must at that time be able to perform the duties of the occupation and to provide leadership direction to a crew.

The type of position and the basic qualifications for the position would make it evident that an applicant for the job should have achieved enough training, experience, knowledge and background so as to have demonstrated his ability to perform the duties of the occupation without further training. Establishing a passing score of 70 percent was completely reasonable in view of the fact that the Company could theoretically have required an applicant for that position to have achieved sufficient knowledge and experience so as to have answered each and every question with a reasonable degree of accuracy. The test had been used since 1966 (with some revision since 1975). Every candidate for the position since 1966 has been required to take the test. Candidates who failed to pass were afforded the opportunity for counseling and the opportunity to take the test at a later point in time. Timmons did not accept the Company's offer of counseling, and he made no request to be re-tested for the position.

It is of significance to note that if Timmons had correctly answered the three questions in issue, his test score would have been 64 percent, substantially below the minimum passing score of 70 percent which had been applied for many years without protest from any of the substantial number of persons who had been tested prior to 1979.

The arbitrator must find that the test in question was fair in its make-up and in the administration thereof. The test must be deemed to have been free of cultural, racial or ethnic bias. The Company followed all of the contractual procedures set forth in Appendix F. In addition thereto, the test, the answers and the

scoring were carefully reviewed by the Company's Staff Representative for the testing section of its training department. The questions, the answers and the scoring were reviewed with different members of supervision who were acquainted with the area and the duties of the position. The Company correctly concluded that the test was fair, was job related, met the contractual requirements, and indicated that Timmons had failed to satisfactorily demonstrate that he had the ability to fill the position of electrical technician at the time that he took the test in February, 1979.

The arbitrator must find that the Company has met its required burden of proof and has demonstrated that the test did meet the contractual requirements set forth in Appendix F of the Collective Bargaining Agreement. ¶

The arbitrator must, therefore, find that the Company complied with the contractual requirements appearing in Appendix F of the Collective Bargaining Agreement at the time that Timmons took the test for the position of electrical technician. The arbitrator must find that the test content met the contractual requirements to the extent that it was "job related." The test was designed to measure Timmons' ability to satisfactorily meet the specific requirements of the job, and the Company met all other criteria for the administration of tests that are set forth in Appendix F of the Collective Bargaining Agreement. The Company correctly concluded that Timmons did not pass the test. It correctly concluded that Timmons was not, therefore, entitled to promotion into the classification of electrical technician at the time that he took the test in February, 1979.

For the reasons hereinabove set forth, the award will be as follows:



AWARD NO. 708

Grievance No. 25-N-40

The Company did not violate any provision of the Collective Bargaining Agreement, and more particularly Article 3, Section 1, Article 13, Sections 1, 2 and 3, or Appendix F of the August 1, 1977, Collective Bargaining Agreement between the parties, when it denied Joseph G. Timmons a promotion to the position of electrical technician on or about March 8, 1979. The grievance is hereby denied.

Bert L. Luckin  
ARBITRATOR

November 30, 1981

CHRONOLOGY

Grievance No. 25-N-40

Grievance filed	June 22, 1979
Step 3 hearing	December 11, 1980
Step 3 minutes	January 30, 1981
Step 4 appeal	February 9, 1981
Step 4 hearing	March 5, 1981
Step 4 minutes	August 6, 1981
Appeal to Arbitration	August 7, 1981
Arbitration hearing	October 14, 1981
Award issued	November 30, 1981