Award No. 720
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 24-P-89
Appeal No. 1324
Arbitrator: Bert L. Luskin
June 28, 1982

INTRODUCTION

An arbitration hearing between two parties was held in Harvey, Illinois, on June 14, 1982. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. W. P. Boehler, Staff Assistant to the General Manager
Mr. R. E. Boyden, Assistant Superintendent, Transportation
Mr. D. Chism, General Foreman, Stores and Trucking
Mr. J. Vechey, General Supervising Industrial Engineer, Industrial Engineering
For the Union:
Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievence Committee
Mr. Ralph Lopez, Chairman, Incentive Committee
Mr. Jack Thill, Griever
Mr. William Winstead, Assistant Griever (Grievant)

BACKGROUND

A "pick system" had been established in the trucking Operation section of the Stores and Trucking Department for a period of more than thirty years. The Company operates approximately 250 trucks that perform various functions within the plant. The pick system had been established to cover a number of selected trucks, and eligible drivers were permitted to pick the trucks that were included within the pick system. A "pick" continued for a period of six months. Except for certain variations that occurred from time to time, employees selecting trucks that were included within the pick system assume that they would drive the selected vehicle for the designated shift, performing certain functions which had always been assigned for performance by the selected truck. Generally those trucks that operated 21 turns a week were included within the pick coverage. Among the trucks that had been included within the designated pick system were trucks Nos. 0473, 0501, 0508, 0526 and 0763.

In the period between June 28 and December 26, 1981, there were a total of 326 allowed picks. With certain exceptions, all trucks included within the "picks" continued to operate and function as they had in the past. In June, 1981, the five trucks in question underwent certain assignment changes. In the past each of the five trucks in question were generally assigned to perform specific tasks on a daily and continuing basis. In June, 1981, the Company made a check of its records and concluded that the five trucks in question were not being fully utilized since the drivers were encountering substantial amounts of idle time. A truck would arrive at a destination, and that truck and driver might thereafter be delayed for a period of one or two hours if a load was not ready for delivery. In order to fully utilize the equipment and the drivers assigned to operate the equipment, the Company placed the first trucks in question on "dispatch." Under the dispatch system the driver reaching his destination and finding himself delayed because a load was not ready, would be dispatched (with his vehicle) to perform other driving duties. His next assignment would depend on the area to which he would be dispatched. Dispatching was performed in several ways, including communication between a driver and a supervisor and by department officials where the delay was being encountered. The net effect of the change in procedure was a substantial increase in the number of loads hauled by each driver on a daily basis.

Prior to the change in procedure, truck No. 0473 had been assigned to transport loads of structural material and sheets intra-plant for shipping. Truck No. 0501 had been assigned to the 28 inch mill to move storage material from four warehouses at that location to a designated storage area. Truck No. 0508 had been

assigned to haul sheets to and from al parts of the Indiana Harbor Works. Truck No. 0526 had been assigned to the Stores Steel Yard and was used to deliver plates, channels and angles throughout the plant. Truck No. 0763 had been assigned to haul slag, precipitator dust, refuse and scale from the electric furnace to various dumping areas. Under the newly established dispatch system, any driver on any of the five trucks in question could be utilized to haul any material. There was no change, however, in the employee's "picked" schedule of hours nor did any changes occur in the employee's "picked" days of work.

The number of picks within a designated period had varied from time to time depending upon the trucks placed into operation and the number of trucks designated by the Stores and Trucking Department as trucks that would be eligible for "pick" in accordance with the established pick procedure. The variation in the number of trucks that would be subject to "picks" would depend upon the level of operations throughout the plant and the Company's determination with respect to the number of pieces of heavy equipment that would be needed to meet the Company's overall plant operational needs and requirements.

Following the institution of the dispatch procedure, a grievance was filed contending that when trucks Nos. 0473, 0501, 0508, 0526 and 0763 were placed on dispatch, the action taken by the Company constituted a violation of a "long-standing working condition." The grievance contended that the Company had thereby violated the provisions of Article 2, Section 2, and Article 3, Section 1, of the Collective Bargaining Agreement. The grievance requested that the Company cease the violation of the local working condition by restoring the operational system for the five trucks in question to the way the assignments had been prior to the institution of the dispatch procedure.

The Company contended that the only local working condition which applied to the pick system was the pick system entity in and of itself. The Company contended that the number of picks per pick period, the trucks placed on pick, the daily work schedules, the shifts and truck assignments could vary and did vary from one pick period to another. The Company contended that since the contents of the pick period have varied from pick period to pick period and within the designated pick period, those components could not have assumed the status of a protected local working condition.

In support of its contention the Company pointed to the fact that in the period between December 28, 1980, through June 27, 1981, 312 picks had been made available to drivers. The Company pointed to the fact that in the period following the institution of the dispatch procedure, the number of picks increased to 326.

The Company contended that although, in general, the five trucks in question had performed the same duties within a pick period on a regular basis, those assignments were subject to change and those changes were made on numerous occasions over a period of many years in order to meet the Company's operational needs and requirements. The Company pointed to the fact that after June 28, 1981, two pick trucks which had hauled refuse were added to the dispatch system without protest from the Union. The Company contended that the entire history of the pick system and the manner in which it has functioned and operated, makes it evident that no consistent practice and procedure had been established which could have achieved contractural effect.

The Company contended that the form of assignments which were made the subject of protest in this grievance can never be made the subject of a local working condition. The Company contended that even if a local working condition had been established, the changes instituted by the Company would have been permissible since a "basis change" had occurred by the institution of a permissive dispatch system and any prior practice would no longer be controlling. The Company contended that the procedure adopted by the Company had no effect or impact upon the established incentive plan. As a matter of fact, the Company contended that incentive earnings for all drivers increased after the institution of the dispatch system that directly affected the five trucks in question in this case.

The issues arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

The provisions cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 2

"SCOPE OF AGREEMENT

2.2 "Section 2. Local Working Conditions. The term 'local working conditions' as used herein means specific practices or customs which reflect detailed application of the subject matter within the scope of wages, hours of work, or other conditions of employment and includes local agreements, written or oral, on such matters. It is recognized that it is impracticable to set forth in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in this Agreement which of these matters should be changed or eliminated. The following provisions provide general principles and

procedures which explain the status of these matters and furnish necessary guideposts for the parties hereto and the partial arbitrator.

2.2.4 "d. The Company shall have the right to change or eliminate any working condition if, as the result of action taken by Management under Article 3 - Plant Management, the basis for the existence of the local working condition is changed or eliminated, thereby making it unnecessary to continue such local working condition; provided, however, that when such a change or elimination is made by the Company any affected employee shall have recourse to the grievance procedure and arbitration, if necessary, to have the Company justify its action.

"ARTICLE 3

"PLANT MANAGEMENT

3.1 "Section 1. Except as limited by the provisions of this Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, to lay off employees because of lack of work or for other legitimate reasons, to introduce new and improved methods or facilities, and to change existing methods or facilities, and to manage the properties in the traditional manner are vested exclusively in the Company, provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union."

The basic facts are not in dispute. For many years the Company utilized a pick system for a substantial number of the trucks operating in the Stores and Trucking Department. For all of those years the Company determined (at the beginning of each pick period) the number of trucks that would become eligible for "pick." The numbers varied depending upon the Company's anticipated operational needs and requirements.

Although the pick system could very well constitute a local working condition within the meaning of that term as set forth in Article 2, Section 2, of the Collective Bargaining Agreement, the evidence indicates conclusively that certain of the component elements of the pick system have never been made the subject of a local working condition.

The Union is correct when it argues that for many years whenever trucks 0473, 0501, 0508, 0526 and 0763 were included within the trucks that were eligible for selection under the pick system, the trucks were primarily assigned to perform specific functions. For example, truck 0473 was assigned to transport loads of structural material and sheets. It performed that function for the entire period of a shift unless the needs of the Company's operations made it necessary to assign the truck and driver to perform a different function for a portion of the shift. Work transfers within a shift did take place. An employee could reasonably expect that if he was assigned to truck 0473 as a result of a selected pick, he would spend the major portion of his time during the entire pick period operating that truck and transporting loads of structural material and sheets. He could, however, be directed to operate truck 0473 to perform a different hauling function.

The evidence is uncontradicted that the needs of the Company's operations were at all times the paramount consideration, and employees and trucks could be removed from a specific assignment wherever the needs of the operations made it necessary to do so.

In the instant case, an employee making his pick would generally be assigned to the truck of his choice. He would work the selected shift and the hours designated for that shift. Those elements of the pick system, however, were subject to change and adjustment from time to time based upon the needs of the operation. What is evident is that an employee "picking" a truck for the pick period could reasonably anticipate (under the old system) that he would spend the majority of his time operating that truck and performing a specific hauling function. The Company at all times, however, reserved the right to change that assignment whenever it became necessary to do so and to assign the driver and the truck to the performance of duties different from those that had generally been performed by drivers who operated "picked" trucks.

Arbitrators have, almost without exception, interpreted the standard local working condition found in agreements between United Steelworkers of America and the coordinating steel companies to mean that general assignment practices cannot be made the subject of a local working condition. The right of the Company to assign the working forces and to direct those forces and to control plant operations, is clearly and unambiguously set forth in Article 3, Section 1. A local working condition cannot be created where it results in divesting the Company of a right that is established by clear and unambiguous language in the Collective Bargaining Agreement.

The Company decision in June, 1981, to institute the dispatch system for the five trucks in question was a reasoned exercise of judgment on the part of the Company. It fell within the scope of the Company's right

to manage the plant and to direct the working forces. It was a decision that was based upon clear and convincing evidence that the working time of the drivers assigned to the operation of the five trucks in question was not being effectively and efficiently utilized. There were operating delays of as much as one to two hours when a truck arrived at a specific location and a load was not ready for movement. It is a basic right of the Company to utilize an employee's working hours and to make assignments that would avoid excessive periods of idle rise.

The decision made by the Company in this case was neither arbitrary nor capricious. It did not place any unreasonable burden upon the drivers who "picked" the five trucks in question. They operated the trucks that they "picked." They performed duties clearly falling within the scope of the job descriptions for their respective classifications. They worked the shifts that they had selected in accordance with their picks. They worked the scheduled work days established for their respective picks. The only change in procedure was to dispatch a driver to operate his "picked" vehicle to perform duties which, as a general matter, had not been performed by operators of that truck under the pick system that had prevailed in the past. Variations had always existed, and the Company did not destroy the pick system. As a matter of fact, the evidence indicates that after the grievance was filed substantially more trucks were made eligible for the pick system than had been eligible to be picked within the period covered by the grievance in this case.

The arbitrator must find that a practice did exist that resulted in the establishment of a pick system, but in each and every instance the Company determined the trucks that would be subject to be picked and the number of trucks that would be included for "picking" within each specific period of time. A practice could not be established which would preclude the Company from utilizing the working time of employees in a reasonable and efficient manner where the assignments clearly fell within the job descriptions for the classification. In some thirty-five years of history in connection with the application of the pick system, there was never a period of time when assignments of a "picked" vehicle were absolutely frozen. The drivers were always subject to some change and some deviation in their assignments. The arbitrator cannot find the existence of a local working condition which would serve to require the Company to assign employees to perform only those hauling operations that had been identified with a particular vehicle.

The Union contended that the action taken by the Company resulted in a loss of incentive earnings. The evidence, however, will not support a conclusion or finding that the institution of the dispatch system for the five trucks in question had any effect whatsoever upon the incentive plan. The incentive plan for covered drivers is a pool plan and incentive earnings are generated based upon the number of loads hauled and the formula established under that plan. As a matter of fact, the incentive earnings for covered drivers for the period between January 10, 1981, and June 27, 1981, averaged 125.9 percent. Following the introduction of the dispatch system, the average earnings for the drivers for the period between July 11, 1981, and December 26, 1981, was 127.2 percent. The fact that incentive earnings are not generated when drivers haul refuse for the major portion of a turn, has nothing to do with the margin of incentive earnings generated by these employees.

In substance, the arbitrator must find that the Company exercised a management judgment that was designed to eliminate and reduce the amount of idle time in connection with the operation of the five trucks in question. By establishing a dispatch system, it eliminated operational delays, increased efficiency and placed no undue, unreasonable or onerous burden upon any of the drivers operating the five trucks in question. The management decision to install the dispatch system could not be characterized as an unreasonable, discriminatory or capricious exercise of judgment. It fell within those rights vested exclusively in the Company under the provisions of Article 3, Section 1. The dispatch system did not diminish nor did it dilute employee earnings. It did not serve to destroy a practice that could be protected by the language appearing in Article 2, Section 2, of the Collective Bargaining Agreement.

Even if the arbitrator were to find that the procedure followed by the Company had resulted in the establishment of a protected practice, the Company would have had the right, by virtue of the language appearing in Article 2, Section 2d, to change or eliminate a local working condition where the basis of the local working condition has been changed or eliminated as a result of the exercise of a right reserved to the Company under Article 3 of the Collective Bargaining Agreement.

The arbitrator must find that the Company did not violate any provisions of the Collective Bargaining Agreement nor did it eliminate a practice which had achieved contractual effect, when it instituted the dispatch system for the operation of truck Nos. 0473, 0501, 0508 and 0763.

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

AWARD NO. 720

Grievance No. 24-P-89

The grievance is hereby denied.
/s/ Bert L. Luskin
ARBITRATOR
June 28, 1982