Award No. 733
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 26-N-28
Appeal No. 1346
Arbitrator: Burt L. Luskin
June 8, 1983

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 17, 1983. The parties had filed pre-hearing briefs in accordance with their adopted procedure.

APPEARANCES

For the Company:
Mr. M. O. Oliver, Senior Representative, Labor Relations
Mr. R. B. Castle, Arbitration Coordinator, Labor Relations
Mr. L. Harding, Superintendent, Transporation
Mr. W. Webber, Trainmaster, Transportation
Mr. R. Kent, Yardmaster, Transportation
Mr. E. Smoltz, Superintendent (Retired), Transportation
Mr. R. Vela, Assistant Superintendent, Labor Relations
For the Union:
Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Ken Gillie, Griever
Mr. Gavino Jiminez, Assistant Griever
Mr. Robert Hill, Safety Committeeman
Mr. Jack Buell, Grievant
Mr. Wayne Evans, Grievant

BACKGROUND

On January 22, 1980, a written grievance was filed contending that the Company had violated the Contractual rights of certain employees by eliminating a past practice procedure whereby conductors and engineers of the Transportation Department who were assigned to the blast furnace had been permitted to stop work one hour before their regular quitting time. The grievance made specific reference to a letter of November 13, 1979, from the Superintendent of the Transportation Department addressed to blast furnace yardmasters. The grievance contended that the Company had violated the provisions of Article 2, Section 2, and Article 3, Section 1, and an established departmental past practice. The grievance requested that the violation be corrected and that blast furnace train crews be permitted to continue their past practice of stopping work one hour before their scheduled quitting time.

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

"ARTICLE 2

"SCOPE OF AGREEMENT

"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 impartial arbitrator.

"c. should there be any local working conditions in effect which provide benefits that are in excess of or in addition to the benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are changed or eliminated by mutual agreement or in accordance with paragraph (d) below.

"d. The Company shall have the right to change or eliminate any local 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

"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 issue in this case arose when the Superintendent of the Transportation Department issued a memorandum to blast furnace yardmasters covering the subject matter of "footboard relief." That memorandum provided in part that because of high wind rates and the necessity to have locomotive crews available at all times at the blast furnace, a policy of "on the job, or footboard relief, will be in effect starting 12/2/79." The newly adopted procedure was to become effective prior to the "opening of the December board." The memorandum referred to the fact that safety must be of prime concern for everyone and, in order to accomplish that objective, the memorandum provided that "there must be locomotive crews available at all times to perform emergency blast furnace switching." The memorandum provided that effective December 2, 1979, "blast furnace locomotive engineers and switch men must remain on the job site until their relief arrives." The yardmasters were instructed that they "must get permission from the trainmaster before they can deviate from this procedure." The memorandum concluded with the statement that a crew member who left before he was properly relieved would be considered as having left his working place without permission from his supervisor and such an infraction "may be cause for discipline up to and including suspension preliminary to discharge."

The Union contended that ever since engineers and switchmen came within the jurisdiction of the Transportation Department more than thirty years ago, a practice had been established and had continued to exist whereby blast furnace train crews had been allowed to "tie up" their engines approximately one hour before the end of their respective shifts of work, obtain their timecards from the yardmaster, and leave the plant approximately one-half hour before the end of their scheduled shifts of work. The Union contended that, except in instances involving bad weather, unique operating conditions, or matters of emergency, that practice had been followed without change or deviation.

The Union contended that the ultimate decision to stop work up to one hour before the end of the shift rested with the yardmaster who granted the early quitting time if he believed that the crews had performed in an acceptable manner for the course of the shift. The Union conceded that in all instances the ultimate decision to tie up engines early and to permit crew members to leave early rested with the yardmaster.

The Union contended that when a similar directive was issued by the assistant superintendent of the Transportation Department establishing footboard relief for blast furnace engine crews on August 15, 1978, a member of the crews objected. He met with the Superintendent of Transportation (Smoltz) and, on August 22, 1978, the Superintendent retracted that directive, and the procedures which had been in effect for many years were reinstituted and continued in effect thereafter until changed by the new Superintendent of the Transportation Department (Harding) on November 13, 1979.

The Union contended that there had been no change in the basis of the practice and that nothing had occurred that would justify the elimination of a practice which had continued without change or deviation for more than thirty years. The Union contended that the elimination of the practice resulted in the elimination of a valuable benefit to the members of the crews.

The Company contended that no practice had ever been established or had existed whereby engine crews had achieved the unqualified right to leave work before the end of their respective shifts. The Company contended that a consistent procedure had been followed whereby yardmasters exercised their authority when they permitted blast furnace engine crews to tie up their engines and to stop working for various periods of time preceding the scheduled end of their shifts of work.

The Company contended that each yardmaster exercised a judgment and made a determination with respect to whether a crew had performed well during the course of the shift and should be rewarded by being allowed to quit early, or whether operating conditions and the need for the services of engine crews would not make it possible to allow a crew or crews to stop work and tie up their engines before the end of the shift. The Company contended that in each and every case the yardmaster (on a daily basis) would exercise his judgment, and his decision was final in each and every instance.

The Company contended that in many instances operating conditions required the engine crew to work up to the very end of the shift, and in many instances to stay with the engine and continue to work on an overtime basis beyond the end of the shift of work.

The Company contended that no firm practice had ever been established whereby any engine crew had a right to assume that a crew would stop work at any period preceding the end of the scheduled shift of work without receiving permission and consent to do so from the yardmaster. The Company contended that in all instances the yardmaster exercised a judgment based upon a crew's working performance, the continued need for the services of the crew, and the weather conditions that may have existed on a given day, in order to determine whether an engine crew would be permitted to stop work before the end of a scheduled shift of work.

The Company contended that operating conditions and crew performance were some of the factors on which the yardmaster's decision would rest. The Company contended that in some instances the yardmaster's mood would determine whether he might favor one crew over another crew or allow one crew to stop work early and deny that right to another crew. The Company contended that under those circumstances the variables and the variations which occurred on a day-to-day basis would make it impossible to assert that an engine crew would have a right to quit early, excepting only when permission to quit early would be given by the yardmaster who directly supervised an engine crew.

The Company pointed to the fact that a footboard relief system had been in effect for the engine crews in the steel shop where the crews could not leave until they had been relieved or unless the relief crew did not appear until a precise period of time preceding the end of the scheduled shift of work.

The Company contended that employees in the Transportation Department were allowed to use their seniority to "pick" their areas of work between the steel shop, the blast furnace or the yard areas.

The Company contended that the Union's position had changed on a number of occasions. The Company contended that the Union had initially contended that the blast furnace engine crews had a right to a continued practice whereby the engine crews could stop working up to one hour before the end of the shift; and at a later point in time the Union changed its position to contend that the engine crews could stop working for up to one-half hour before the end of the shift. The Company pointed to the fact that at the arbitration hearing the Union's position again changed, and the Union (for the first time) contended that, although there was no precise period of time within which an engine crew could stop work prior to the end of the shift, the Company did not have a right to eliminate and abolish a practice whereby a yardmaster could exercise a judgment to permit a crew to stop work before the end of the shift of work if, in his judgment, conditions and circumstances would permit an early quit.

The Company contended that the evidence conclusively demonstrated that the elements that would have to be present in order to establish a practice, did not exist, had never existed, and the procedure which had been followed without change or deviation for many, many years did not result in the establishment of a stop-work practice prior to the end of a shift of work based upon the exercise of judgment on the part of the supervising yardmaster.

The testimony offered by Company and Union witnesses concerning the procedures followed by yardmasters in the assignments of blast furnace engine crews, was consistent in all significant respects. Company and Union witnesses agreed that for a period of many years yardmasters would generally permit an engine crew to tie up its engine for as long as one hour before the end of the shift. On many occasions a crew would be given their timecards and allowed to leave the plant as much as thirty minutes before the end of the shift. Company and Union witnesses agreed, however, that in every respect the yardmaster made the final determination with respect to when an engine crew could leave the engine and when the crew could punch out and leave the plant. Company and Union witnesses agreed that the yardmaster would make

a decision based upon operational needs and requirements. At times the yardmaster would be motivated in making his decision by consideration of weather or by the precise period of time when hot metal would be available from a furnace. Company and Union witnesses agreed that on many occasions the yardmaster would permit a crew to leave early if the yardmaster was in a "good mood"; while on many occasions he would hold the crew until the last possible moment if he was upset with a crew because of what he believed might have been a poor working performance.

There is evidence in the record that some yardmasters rewarded good performance by a crew by letting the crew tie up the engine early for as long as one hour before the end of the shift and leave the plant as much as one-half hour before the end of the shift. In some instances permission to leave before the end of the shift was withheld if the yardmaster believed that a crew's work performance did not justify an early quit. What emerges from all of the evidence is that there was never a single occasion when a crew was allowed to leave early as a matter of right or as a matter of compliance with an alleged past practice. The evidence would indicate that some yardmasters were more liberal than others, but there is nothing in the record that would indicate that any crew had ever contended that they should be permitted to leave before the end of the shift based upon a matter of right arising out of a so-called established practice or custom.

There is evidence in the record that no crew had ever received overtime payment for working the full eight hours of the shift. All crews understood that the yardmaster made the final decision with respect to whether the crew would or would not be permitted to leave the engine or to leave the plant before the expiration of the full eight hours of the shift.

An assistant superintendent concluded, in 1978, that some crews were abusing the privileges which had been granted to them when they began to leave their engines substantially before the end of the shift. The assistant superintendent at that time instituted the concept of footboard relief as a means of controlling what he believed to be a developing abuse relating to early tie ups of engines. The institution of the footboard relief system at that time was protested by a Union representative who discussed the matter with the Superintendent. The Superintendent was assured by the Union representative that the crews would not abuse the early tie up and early quit procedures if the Superintendent would reverse the decision made by the assistant superintendent to institute the footboard relief system. The Superintendent then countermanded the directive issued by the assistant superintendent, and the old procedures were reinstituted. It should be noted that the Union objection to the institution of the footboard relief concept was not based upon a matter of "right." The Union representative did not, at that point in time, contend that a practice had existed which had ripened into a contractual right.

The evidence offered in this proceeding is remarkably consistent in all significant respects. No crew had ever contended that a crew had a right to tie up the engine one hour before the end of the shift. No crew had ever contended that if the crew's work was completed, the crew had a right to leave the plant before the end of its shift of work. Union witnesses agreed that when they were allowed to leave early, it was based upon an exercise of judgment by the yardmaster. That person exercised his discretion based upon a number of different considerations including weather, production needs and requirements, crew performance, and the mood of the yardmaster.

The procedures followed by yardmasters over a period of many years in allowing crews to leave early when (in his opinion) the crews could be spared, and not allowing crews to leave early when (in his opinion) their work performance did not justify an early quit, could not possibly result in an establishment of a practice based upon a consistent and undeviating course of conduct. What had occurred did not achieve the status of a past practice that could be characterized as a local working condition. The fundamental principles essential to the establishment of a local working condition are not present in this case.

There was no degree of consistency among yardmasters with respect to the procedures followed in permitting or not permitting crews to tie up early. One crew could be rewarded by an early tie up if the yardmaster believed that it had performed its functions in an efficient manner during the course of the shift. A second crew would be kept until the very end of the shift if the yardmaster believed that the crew had not performed well or if he believed that operating conditions, the need for engine service, weather considerations, or any other element that might impact upon the Company's operations would justify retention of the crew up until the last possible moment.

What emerges from all of the evidence in the record is the fact that some yardmasters were more generous than others; some crews were more cooperative than others; and operating conditions varied almost from day to day. Any single factor or a combination of those factors would determine whether a yardmaster would permit a crew to tie up early or leave the plant substantially before the end of the shift.

Under the present footboard relief system, crews must remain with their engine until they are relieved by the crew coming on shift. If the crew is not relieved by approximately fifteen minutes before the end of the shift, the yardmaster will permit the crew to tie up the engine and prepare to leave the area where the engine was tied up approximately ten or fifteen minutes before the end of the shift.

In substance, the arbitrator must find that the evidence will not support a conclusion or finding that any practice with respect to tieing up an engine and permitting a crew to leave early has been so consistent and undeviating as to have resulted in the establishment of a protected local working condition. The principal elements for the establishment of a protected local working condition are not present in this case, and the fact that some yardmasters in exercising judgment may have allowed some engine crews to leave their engine substantially before the end of the shift does not result in establishing a local practice and custom that would require every yardmaster in the blast furnace area to permit every crew to tie up its engine substantially before the end of the shift.

The institution of the concept of footboard relief does not in any way constitute a violation of any of the applicable provisions of the Collective Bargaining Agreement. The decision to institute footboard relief in accordance with the rights reserved to the Company by virtue of the provisions of Article 3, did not constitute a violation of the Agreement. The custom and procedure followed by yardmasters in permitting engine crews to tie up their engines early and to punch out early under certain sets of facts and conditions, did not result in the establishment of a local working condition pursuant to the provisions of Article 2 of the Collective Bargaining Agreement. The institution of the concept of footboard relief for the engine crews operating in the blast furnace did not in any way result in a violation of any applicable provision of the Collective Bargaining Agreement.

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

AWARD NO. 733

Grievance No. 26-N-28

The grievance is hereby denied.

/s/ Burt L. Luskin

ARBITRATOR

June 8, 1983