

Award No. 781

OPINION AND AWARD

In the Matter of Arbitration Between

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA

LOCAL UNION 1010

Grievance Nos. 20-R-139, 20-S-2, 20-S-5

Appeal No. 1392

Arbitrator: Herbert Fishgold

May 26, 1988

Appearances:

For the Company

M.M. Roglich, Arbitration Coordinator, Union Relations

V. Soto, Project Representative, Union Relations

R. Tavarczyk, Section Manager, Locomotive Shop, Mobile Equipment Services Department

D. Miles, Supervisor, Locomotive Shop, Mobile Equipment Services

B. Iczkowski, Now Retired Section Manager, Pipe Shop, Field services Department

L. Moore, Supervisor, Pipe Shop, Field Services Department

C.A. Duvall, Project Application Engineer, Industrial Engineering Services

For the Union

Bill Trella, International Staff Representative

Bill Gables, 1st Vice Chairman, Grievance Committee

Gavino Galvan, Chairman, Grievance

Don Lutes, Secretary

Alexander Jacque, Griever

Luis Aquilar, Griever

Mike Mezo, Witness

Leon Scott, Witness

Dallas Perkins, Jr., Witness

Tom Cusic, Witness

Leroy Eaton, Jr., Witness

Cesar Morales, Witness

Mario Gonzalez, Witness

Frank Drost, Witness

Robert Moats, Witness

Terry Duvall, Witness

Nathaniel Aldrich, Grievant

Statement of the Grievance:

20-R-139: Management violated the Collective Bargaining Agreement when it transferred the grievant's work across seniority unit lines and reduced the crew size of his sequence.

20-S-2: On or about July 10, 1986, and any subsequent period thereafter, Management violated the Collective Bargaining Agreement when they transferred the fabrication of sand pipes across seniority unit lines to the Field Services Pipefitters, that has historically been performed by the Locomotive Shop Pipefitter.

20-S-5: On or about July 1, 1986, and subsequent periods thereafter, the Union became aware that Management was violating the Collective Bargaining Agreement by transferring the day-to-day maintenance and repair work of the Locomotive Shop across seniority unit lines to the Field Services Pipefitters, that has historically been done by the Pipefitter in the Locomotive Shop who is laid off.

Relief sought:

20-R-139: Pay grievant all monies lost and make whole for all job rights and benefits.

20-S-2: That Management cease and desist transferring Locomotive Shop Pipefitting duties to other sequences and make the grievant whole for all wages, benefits, and job rights lost due to the violation.

20-S-5: That Management cease and desist transferring Locomotive Shop Pipefitting duties to other sequences and make the grievant whole for all wages, benefits, and job rights lost due to the violation.

Contract provisions cited:

The Union cites the Company with alleged violations of Article 2, Section 2; Article 3, Sections 1 and 3 of the Collective Bargaining Agreement, as well as the Job Description and Classification Manual.

Statement of the Award:

The grievances are denied.

**FACTS**

N. Aldrich (hereafter "Grievant"), Check No 6091, is a Pipefitter standard in the Locomotive Rail Repair Shop of the Mobile Equipment Services Department. The grievant and four other employees were laid off on March 2, 1986. The other four employees were a Diesel Machinist, a Tool Room Attendant and two Hostler employees. These layoffs continued a trend which began in 1981, during which time the bargaining unit workforce in the Locomotive Repair Shop had been decreased by approximately 44%, from 72 to 40 employees. This decrease has also reduced scheduling requirements for most occupations and some occupations have been completely eliminated.

The following table indicates the layoffs from September, 1984 to March 2, 1986:

Layoff Date	Name	Race/Ethnicity	Occupation	Sequence	Date of Hire
9-16-84	J. Malocha	Anglo	Diesel Machinist	Diesel Inspection	2-2-81
	W. Hilbrich	Anglo	Apprentice Diesel Machinist	Diesel Inspection	6-18-79
9-16-84	M. Dragutinovich	Anglo	Apprentice Machinist	Diesel Inspection	9-24-73
	A. Villarreal	Mex.	Laborer	Laborer	7-1-76
9-23-84	W. Olenik	Anglo	Pipefitter Standard	Pipefitter	12-2-63
	L. Garcia	Mex.	Painter	Painter	05-25-55
	I. Gonzales	Mex.	Laborer	Laborer	7-1-59
9-29-85	R. Gardner	Anglo	Diesel Machinist	Diesel Inspection	1-21-81
	R. Capellari	Anglo	Diesel Machinist	Diesel Inspection	12-29-80
	E. Fisher	Anglo	Diesel Machinist	Diesel Inspection	11-3-80
3-2-86	B. Burley	Mex.	Tool Room Attendant	Tool Room	9-5-57
	J. Lopez	P.R.	Hostler	Hostler	12-4-69
	J. McAdams	Blk.	Hostler	Hostler	1-28-74
	S. Guthrie	Anglo	Diesel Machinist	Diesel	4-03-78

The following table illustrates the scheduling by occupation in the Locomotive Shop following the layoffs of March 2, 1986.

Sequences	No. of Employees Scheduled After Layoff
Diesel Inspection	27
Motor Inspection	8
Hostler	2
Tool Room	1
Janitor	1
Pipefitter	0
Welding	1
Carpenter	0
Crane	0
Labor	0
Paint Labor	0
Painter	0
	40

The number of employees scheduled at the time of this arbitration totals 39, with the Diesel Inspection Sequence being reduced from 27 to 26 and the Motor Inspection Sequence from 8 to 7, after retirements from those groups, along with one additional Hostler returning to active employment.

According to the above table, as of March 2, 1986, there were no Pipefitters scheduled, and the grievant was the last Pipefitter to be laid off. There is no dispute that prior layoffs affected the Pipefitter forces. The most recent layoff involved W. Olenik on September 23, 1984. The Locomotive Repair Shop assigned the engine Pipefitting work performed by the grievant to the Diesel Machinist occupation. The issue of engine Pipefitting work is the subject of Grievance No. 20-R-139.

This grievance also involves propriety of assigning to Field Services Pipefitter employees the repair and maintenance Pipefitting work associated with the Locomotive Shop building as well as certain Pipefitting fabrication for locomotive engines. The Field Services Department includes the Pipe Shop that was formerly a part of the Central Mechanical Department, of which the Locomotive Shop was also a part. These issues are the subjects of Grievance Nos. 20-S-2 and 20-S-5.

The Union claims that the reassignment of responsibilities violates the Collective Bargaining Agreement. The issues were discussed in the initial steps of the dispute procedures without resolution and were subsequently filed as formal grievances on June 26, 1986 (Gr. 20-R-139) and October 8, 1986 (Gr. 20-S-2 and 20-S-5) (Company Exhibits 1, 2 and 3, respectfully). The parties have agreed to hear these cases together in the arbitration step of the procedure.

#### ISSUE

The issue in this case is whether the Company violated Article 2, Section 2; Article 3, Section 1; Article 4, Section 4; Article 9, Section 4; and Article 13, Sections 1 and 3, of the March 1, 1983 Collective Bargaining Agreement, including the "Job Description and Classification Manual," by laying off the grievant and assigning the work he had performed as a Pipefitter in the Locomotive Shop of the Mobile Equipment Services Department to Diesel Machinist employees in the Locomotive Shop and to employees of the Pipefitting Sequence in the Field Services Department.

#### DISCUSSION

The Union claims that the layoff violated the Collective Bargaining Agreement. According to the Union, the job reassignments were not consistent with the terms of the Agreement and, moreover, the resulting layoff was racially motivated.

On the other hand, the Company claims that the layoff of the grievant was a reasonable exercise of management rights under the Agreement. In addition, the Company claims that there is no basis to support the grievant's claim that his layoff was racially motivated.

Turning to the record presented, the Arbitrator finds that there is no evidence that the grievant's layoff was racially motivated. B. Tavarczyk, Section Manager for the Locomotive Shop, was directed by the Company to reduce his workforce by a specified percentage. At the time that Tavarczyk had to reduce the workforce, the sequences in the Locomotive Shop, apart from the Diesel Machinist and Pipefitter groups, had been reduced to their base need levels. Certain sequences had no active members, while others had only one or two employees left and could not be reduced any further. The grievant was laid off rather than another Diesel Machinist being laid off because of the versatility of the Diesel Machinist occupation. Diesel Machinists can perform both Machinist and Pipefitting duties, while the grievant, being a Pipefitter, could only perform the latter. In addition, there was one Diesel Machinist laid off at the same time. Furthermore, the layoffs in this case occurred on a plant-wide basis, which included the Locomotive Shop. There were four others who were laid off at the same time as the grievant: two Hispanic, one Black, and one White Diesel Machinist. Force reductions which had preceded this particular layoff had already included one Pipefitter and six Diesel Machinists, all of whom were White.

In sum, according to Tavarczyk, the decision to retain a Diesel Machinist rather than a Pipefitter was made because Tavarczyk did not feel he could deplete the same versatile Diesel Machinists any further.

Tavarczyk testified that race was not a consideration in his decision to layoff the grievant.

Finally, the grievant did not produce any evidence of animosity in previous encounters between he and Tavarczyk. There have been no discipline actions given to the grievant by Tavarczyk. In fact, Tavarczyk was responsible for several commendations given by the grievant.

The grievant testified about several incidents which he claims demonstrate evidence of racial animus. One incident involved the matter of the grievant's status while on vacation and how his status was recorded on the (Manpower information System) document (Union Exhibit No. 9). However, as the company demonstrated, this incident was an administrative error that was corrected without detriment to the grievant. The grievant also raised another incident where he had been transferred to the Locomotive Shop and did

not initially receive the Pipefitting monthly assignments. While the grievant argued that race was an issue, the complaint was granted at the First Step of the of the procedure. The Company explained that the grievant had not initially been assigned to perform the monthly Pipefitting tasks based on the opinion of Tavarczky that the grievant needed more time and experience before he should perform this work. Several other alleged incidents in 1978 and 1979, concerning an engine moving while the grievant was working on it, and an incident between the grievant and a bargaining unit hourly foreman, did not directly involve Tavarczky. The involvement of Tavarczky was limited to investigating the incident, which determined that certain aspects were unclear. Consequently, he made a decision not to take action, although there was another case in which an employee similarly moved an engine with the grievant in the vicinity and that employee was disciplined.

It is clear from the above that the Company has consistently taken actions in response to expressed concerns of the grievant. There is no indication that the grievant's rights have been ignored or that management sanctioned any racial prejudice or actions against him. Moreover, the incidents complained of took place several years ago and there is no reasonable nexus between those incidents and the instant layoff. Accordingly, for the reasons stated herein, there is no evidence which indicates that the grievant's layoff was racially motivated.

Since there was no racial motivation for the layoff, the remaining issue is whether the job reassignment was consistent with the terms of the Collective Bargaining Agreement.

Article 3, Section 1 of the agreement states that:

...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...to layoff 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....

As stated in *Elkouri end Elkouri, How Arbitration Works*, (4th ed., BNA, 1985, p. 342), "probably no function of the labor-management arbitrator is more important than that of interpreting the collective bargaining agreement."

There is no need to interpret the agreement if it is not ambiguous.

An agreement is not ambiguous if the arbitrator can determine its meaning without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends. But an agreement is ambiguous if 'plausible contentions may be made for conflicting interpretations' thereof. Moreover, it is recognized that whether a document is or is not ambiguous is a matter of impression than of definition and this is obviously so, because each provision may be as clear and definite as language can make it, yet the result of the whole can be doubtful from lack of harmony in its various parts. (Id. at 342). The Collective Bargaining Agreement in the instant case is clear. The management rights clause gives the Company the exclusive right to direct and control the workforce and to layoff employees for lack of work. The grievant's layoff occurred on March 2, 1986, following a determination by the Company that its then-existing 45-employee workforce in the Locomotive Shop would have to be reduced in light of a declining business environment. In determining which Shop sequences would be targeted for layoffs, the Company was faced with several constraints, which it proceeded to identify. First, due to prior force reductions, several sequences (Carpenter, Crane, Janitor, Labor, Paint Labor and Painter) had already been stripped of all their employees so that no further layoffs were possible. Second, the sole employee scheduled in the Janitor sequence had to be retained in order to maintain sanitary conditions in the Shop. Third, the Department's only Welder could not be laid off because no other occupation in the Shop could perform the welding function, a task which is absolutely essential in the repair of locomotive engines. Fourth, the Department could not afford to lose additional Motor Inspectors from its already reduced electrical force, especially since no other occupation in the Shop could perform this highly specialized and vitally important craft function.

In light of the above constraints, the Company determined that it had to limit its layoff activity to the following sequences: Hostler, Tool Room; Diesel Inspection; and Pipefitter.

The Company reduced the Hostler workforce since incumbents of that sequence had recently been trained in the use of radio controls to operate locomotive engines. The Hostler occupation is responsible for moving the engines into, within and out of the Locomotive Shop. Prior to the radio control training, one Hostler was required to operate the engine while another was needed to perform the necessary switching duties. Since use of the radio controls allowed one Hostler to perform both of these tasks, the Company reduced the Hostler workforce by 50% (from 4 to 2).

The Company also cut the workforce in the Tool Room Sequence. In the past, two employees had typically been scheduled in this sequence. One of these employees was assigned to the Tool Room while the other attended to the Parts Room facility. The Company determined that it could efficiently operate the Tool Room even in the absence of a full-time attendant. Therefore, it laid off the employee who had been responsible for performing this function. On the other hand, the Company determined that it could not displace the full-time Parts Room Attendant. This Attendant checks inventories, orders parts, receives shipments, locates and disburses parts, and ships materials. Since proper performance of these duties is indispensable to effective functioning of the Locomotive Shop, the Company concluded that the Parts Room Attendant would have to be retained.

After reducing the workforce in the Hostler and Tool Room Sequences to a bare minimum, the Company had to select the Pipefitter and/or Diesel Inspection Sequences for its additional force reductions. Prior to making its selection, the Company evaluated the duties performed by members of these two sequences. This evaluation noted that Pipefitters perform no duties which are not also performed by Diesel Machinists. On the other hand, Diesel Machinists perform a wide range of duties outside the scope of the Pipefitter occupation. For this reason, the Company decided that the Pipefitter should be laid off before making any further reductions in the Diesel Inspection Sequence beyond the one employee who was also laid off at the same time as the grievant on March 2, 1986. It is noted that the Shop had 36 Diesel Machinist employees in 1980 while, with the layoff in 1986, it had 27 employees that actively remained in that capacity.

Based on the above, it is clear that the Company had a rational basis for selecting the Pipefitters for layoff before laying off the Diesel Machinists. The evidence is clear that the Diesel Machinists are much more versatile than the Pipefitter occupation and thus, the Company could achieve its objective of reducing the workforce while, at the same time, insuring that the Pipefitter sequence would still be done. As noted earlier, the management rights clause clearly gives the Company the right to direct the workforce. In the instant case, the decision to layoff Pipefitters before Diesel Machinists was within the Company's discretion under the management rights clause.

The Union claims that the assignment of Pipefitting work to the Diesel Machinists is inconsistent with the responsibilities of the respective occupations. However, there is nothing which indicates that the Pipefitter occupation has exclusive jurisdiction over engine Pipefitting work.

In this regard, the record indicates that, in the past, the Diesel Machinist and Pipefitter occupations have both performed engine Pipefitting work. Whenever the grievant, the Shop's only Pipefitter since 1984, has taken vacation, his vacancy has been filled by Diesel Machinists who performed the duties that would otherwise have been assigned to him. Moreover, the grievant has been scheduled for only five of the Locomotive Shop's twenty-one operating turns each week. On the remaining sixteen turns, Diesel Machinists performed whatever Pipefitting duties were necessary on those turns. Finally, the layoff of the other Pipefitter in 1984 meant that, despite there being an approximate 20% decrease in engine work (from 67 to 55 locomotives) at the time, the remaining work load, still constituting 60% of the previous load for one individual, was taken over by Diesel Machinists. These occurrences of Diesel Machinists performing Pipefitting work were not challenged by the Union.

Notwithstanding the above, the Union claims that the job descriptions, as well as the Operations and Incentive Report sheets, indicate that there is a demonstrated incompatibility in having Diesel Machinists employees perform the engine Pipefitting work that allegedly belongs to the Pipefitter occupation. However, the primary function in the job description for the Diesel Machinist occupation is described as "Inspect, repair and overhaul Diesel locomotives." (Company Exh. 8) The Company has interpreted and applied this description to encompass the full range of mechanical-related maintenance activities. That interpretation is supported by the assignment practices involving the work actually performed by the Diesel Machinist occupation. The random Locomotive Repair Reports clearly document that the Diesel Machinist occupation has been regularly responsible for duties claimed exclusively by the grievant as a Pipefitter. The reports also indicate that these repair reports are intended as guides for the performance of certain functions and are not indicative of restrictive work assignments, as has been alleged by the Union. Moreover, the dates of the reports are all prior to the date of the layoff of the grievant.

The Union had also cited items W1, W10, W13, W28a, and W36 from the "Locomotive Shop Incentive Standards" list as items whose performance is restricted to the Pipefitter occupation. However, the Standards list does not identify the operations in terms of the occupation responsible. Rather, it is a generic list that simply identifies incentive standards for certain work. The items identified are performed by Diesel Machinist employees as necessary.

The fact that Diesel Machinist employees are regularly required to perform, "Pipefitter" duties is evidenced further by noting the Oral Complaint Discussion that was held on August 7, 1978, in which the grievant complained of Diesel Machinist employees performing Pipefitter work. The Company response in that case included the following:

These traditional duties required to be performed by a Diesel Machinist, such as Pipefitting on a Diesel locomotive, is required of him twenty-four (24) hours a day, seven (7) days per week. The Diesel Machinist is required to perform all Mechanical Maintenance related to Diesel Locomotives.

Thus, it is clear that the grievant was aware of the shared jurisdiction and that the Diesel Machinist occupation performs the entire range of maintenance, mechanical and Pipefitting, on locomotive engines, while the Pipefitter only performed Pipefitting.

The Union also argued that the assignment of Pipe Shop employees to building Pipefitting maintenance work in the Locomotive Shop violated established work procedures. However, the Company claims that these assignments are consistent with the jurisdictional entitlements of the occupations. According to the Company, the Field Services Pipe Shop has jurisdictional entitlement to the disputed building maintenance work because that group has been predominately responsible for such activity in the Locomotive Shop. In addition, the Company claims that Pipe Shop employees have performed a substantial portion of daily Pipefitting maintenance in the Locomotive Shop.

Based on the evidence, it is clear that the Locomotive Shop routinely requested labor and materials from the Pipe Shop to repair steam, water and air lines. Open shop orders associated with such work, for the years beginning with 1982, indicate that the hours charged by the Pipe Shop against the Locomotive Shop under those work orders amounted to 1181 hours in 1982, 848 hours in 1983, 474 hours in 1974, 328 hours in 1985, and 424 hours in 1988. In addition, Plumbing Schedule work reports for 1984 demonstrate that Pipe Shop employees were consistently assigned to the Locomotive Shop to perform Pipefitting maintenance work. Furthermore, since 1984, whenever the grievant has taken vacation, his vacancy has been filled by Field Services.

Finally, the Union claims that the assignment of Sand Pipe Fabricating to the Pipe Shop violated the jurisdictional entitlement of the Locomotive Shop Pipefitter occupation. Sand pipes are a component of the diesel locomotive engines which direct sand from the engine onto the railroad track to increase friction between the locomotive's wheels and the track to aid in movement of the engine. The pipes must be bent, either by heat treatment using a torch, or with the use of a hydraulic bending machine, in order to shape it for its intended purpose.

Based on the evidence, this fabrication has been historically performed on an "as needed basis" by the Diesel Machinist, Field Services Pipefitter and Locomotive Shop Pipefitter occupations. This type of work occurs on an occasional basis and does not require a major time expenditure. The maximum number of sand pipes necessary for installation in a given year is approximately 200, although such wholesale turnover would be extremely unlikely. The normal time spent in cutting and bending a single sand pipe is approximately 6 minutes (see item 32 of the Irregular Operations list under Company Exh. 9-B). Thus, it is clear that this function could not provide full-time employment to a Pipefitter even if it was within his jurisdictional responsibility. Accordingly, the assignment of Sand Pipe Fabricating to the Pipe Shop did not violate the jurisdiction of the Locomotive Shop Pipefitter.

Thus, based on the above, it is clear that there is no exclusive jurisdiction for the Locomotive Pipefitter occupation with respect to the work in question. Since there is no exclusivity, the Company had the right to assign the work to other appropriate employees. As stated in U.S. Steel Award, No. USS-7343-S (Dybeck/Garrett 1970).

In the area of the assignment of work among various trade or craft jobs or between trade or craft jobs in the plant, the determining factor is not whether a given trade or craft job has performed that work in the past or participated in the performance thereof, but whether the work has been performed exclusively in that plant by the trade or craft job on whose behalf the claim is made (absent some other controlling local seniority agreement or practice not raised here).

Here there is no denial of the fact that Millwrights have participated in the installation and adjustments of burners and, indeed, may well have performed that or similar work by themselves from time to time.

However, it is just as clear that Central Maintenance jobs, such as Pipefitters and Boilermakers, have also performed that or similar work by themselves from time to time. However, it is just as clear that Central Maintenance jobs, such as Pipefitters and Boilermakers, have also performed this work particularly where, as here, the work was required in conjunction with a rebuild of one of the walls on the furnace. Moreover,

throughout the years Pipefitters have also installed burners on other equipment in the Galvanizing Department including the somewhat similar burners on a Continuous Normalizing Line.

Thus it appears that an overlap exists in the assignment of the particular work involved here and, therefore, it has not been established that the grievant Millwrights were entitled to perform the work in question on the basis that this work has been exclusively assigned to them in the past. Accordingly, the grievance will be denied. (pp 2-3)

Accordingly, for the reasons stated herein, the Company's determination to discontinue scheduling the Locomotive Shop Pipefitter occupation and to lay off the grievant was based on sound business reasons and was within the management rights clause of the Collective Bargaining Agreement. There is no evidence that the discontinuance of the scheduling was motivated by racial bias against the grievant. Finally, the assignment of the work previously performed by the Pipefitters to the Diesel Machinists and Field Services Pipefitters is consistently with established work assignment procedures and does not violate any exclusive jurisdictional entitlements. In light of the aforementioned reason, the grievance in the instant case are denied.

**AWARD**

The grievances are denied.

/s/ Herbert Fishgold

Herbert Fishgold

Washington, D.C.

May 26, 1988