Award No. 786
OPINION AND AWARD
In the Matter of Arbitration Between
Inland Steel Company,
Company,
and
United Steelworkers of America
Local Union 1010
Union.
Grievance No. 23-S-29
Appeal No. 1397
Arbitrator: Herbert Fishgold
September 9, 1988
Appearances:
For the Company:
R. Vela, Section Manager, Union Relations
S. Amotulli, Section Manager, No. 1 & 2 CS
P. Parker, Representative, Union Relations
For the Union:
W. Trella, Staff Representative
T. Zaborski, Griever
J. C. Porter, 1st Vice Chair, Grievance Committee
J. Connon, Asst. Griever
D. Spann, Steward
Statement of the Grievance:
* The Company violated the contract when it failed to honor a request by Dennis Grudizion on June 8, 1987 to withdraw from the finishing sequence.
Presenting the Matter on Behalf of the Company:
Robert B. Castle, Section Manager, Union Relations
Presenting the Matter on Behalf of the Union:
J. Robinson, Arbitrator Coordinator
Relief Sought:
* The aggrieved be allowed to exercise his right to withdraw from the sequence and paid all monies and benefits lost due to the Company's denial.
Contract Provisions Cited:
* The Union cites the Company with alleged violations of Article 3, Section 1 and Article 13, Sections 3 and 4 of the Collective Bargaining Agreement.
Statement of the Award:
* The grievance is denied.
CHRONOLOGY
Grievance No. 23-S-29
Grievance filed: August 3, 1987
Step 3 hearing: August 26, 1987
Step 3 minutes: December 21, 1987
Step 4 appeal: January 4, 1988
Step 4 hearing(s): June 17, 1988
Step 4 minutes: July 13, 1988
Appeal to Arbitration: July 1, 1988
Arbitration hearing: July 27, 1988
Award issued: September 9, 1988
Facts
D. Grudizion (hereafter "Grievant"), Check No. 25474, was employed by the Company on April 22, 1966. At the time of the incident, which gave rise to this grievance, he was working as a laborer with sequential standing rights to the Conditioning Sequence of the No. 3 Cold Strip Mill West Department. The Grievant is also an applicant to the Cranes Sequence and, on a regular basis, he promotes from the labor pool to fill temporary vacancies in the Cranes Sequence.

It is undisputed that the Grievant has the ability and physical fitness to perform the work in the Conditioning Sequence. The Grievant is periodically recalled to the Conditioning Sequence which prevents his filling temporary vacancies in the Cranes Sequence to which he would otherwise be entitled by virtue of his status as an applicant to that Sequence. The Grievant claims, however, he has the right to demote from the Conditioning Sequence so that he can continue to fill temporary vacancies in the Cranes Sequence.
The relevant contractual provisions in Article 13 associated with this case are as follows:
13.13 Section 4. Sequential Rights. Employees who have acquired sequential standing as of the day prior to the date of this Agreement shall retain such standing unless cancelled or modified in accordance with the provisions of this Article. Employees shall hereafter establish standing with a sequence after thirty (30) turns worked therein filling permanent vacancies in accordance with Section 6 below except that, an employee in the department who wishes to bid for a permanent opening therein and is absent from the plant at the time such opening occurs by reason of sickness, injury, vacation, or leave, or is on layoff from his department, shall be afforded the opportunity to do so within seven (7) calendar days of his return to work in his department, and assignment to such opening shall be in accordance with the provisions of Article 13, Section 6-c. Such employee shall establish sequential standing after having completed thirty (30) turns worked in the sequence by filling permanent vacancies in accordance with Section 6 below. Standing of employees with a sequence shall be as determined by the provisions of this Article. Notwithstanding any other provisions of the Agreement, employees hired by the Company to fill permanent vacancies above the labor pool which cannot be filled in accordance with the provisions of this Article shall thereafter establish continuous length of service within the sequence in which the vacancies exist upon completion of the 520-hour probationary period.
No employee shall hold standing in more than one (1) sequence at one time, and an employee leaving one (1) sequence to enter another to fill a permanent vacancy shall lose his standing in the sequence from which he transfers after thirty (30) turns worked in the new sequence; it being understood, however, than an employee who is stepped back to the labor pool in connection with a reduction in force may enter another sequence in the department and acquire standing therein as above provided.
13.15 An employee so stepped back shall only hold standing in the last sequence in which employed and in his original sequence. The standing of such an employee in his original sequence shall be preserved until forfeited by failure to return thereto when recalled. Upon return to his original sequence, his standing in such other sequence shall be cancelled.
13.16 In all cases, the employee must enter a sequence in the lowest job of the sequence, unless another employee entitled to the higher job makes this impossible by waiving promotion or unless none of the incumbents on the subordinate job is qualified under the terms of this Article to promote. An employee who is established in a sequence and requests demotion from the sequence shall have any sequence standing in that sequence cancelled immediately subject to restoration pursuant to Section 8-a of Article 13.
Section 6. Filling Vacancies and Stepbacks Within a Sequence.
a. Temporary Vacancies:
(1) known at the time that schedules are posted to be of at least five (5) days' duration in the payroll week, shall be filled by the employee within the sequence in which such vacancy occurs in accordance with the provisions of this Article, and where such vacancy is on the lowest job in the sequence shall be filled in accordance with Section 10 of Article 13 by the employee with standing in the sequence involved stepped back out of the sequence or, if none, by the applicant qualified in accordance with Section 1 of this Article;
(2) known to be of less than five (5) days' duration in the payroll week, or where the duration of the vacancy is not known, at the time schedules are posted, shall be filled by the employee on the turn and within the sequence in which such vacancy occurs in accordance with the provisions of this Article, and where such vacancy is on the lowest job in in the sequence shall be filled in accordance with Section 10 of Article 13 by the employee on the turn in the labor pool with standing in the sequence involved stepped back out of the sequence, if none, by the applicant on the turn in the labor pool qualified therefor in accordance with Section 1 of this Article; or
(3) if the lowest job in the sequence not filled in accordance with (1) or (2) above, it may be filled by the employee then working in the labor pool group most conveniently available and qualified therefor in accordance with Section 1 of this Article;
(4) when an employee is absent from a turn on which he was scheduled, the vacancy shall be filled by the employee on the turn within the sequence in which the vacancy occurs in accordance with the provisions of this Article and where such vacancy is on the lowest job in the sequence it shall be be filled in accordance with Section 10 of Article 13 by the employee on the turn in the labor pool with standing in the sequence

involved stepped back out of the sequence of, if none, by the applicant most conveniently then working in the labor pool and qualified therefor in accordance with Section 1 of this Article and, if none, it may be filled by the employee then working in the labor pool most conveniently available and qualified therefor in accordance with Section 1 of this Article;
(5) Where an indefinite absence of an employee exists for twenty-one (21) days and is still indefinite, the vacancy shall be in accordance with sequential standing beginning with the first work-week schedule posted following the twenty-first (21) day of such absences;
13.27 Provided, however, that where such vacancy is on the lowest job in the sequence it shall be filled by the applicant qualified therefor in accordance with Section 1 of Article 13.
13.36 e. Applications. Employees (including employees on layoff from their parent department) other than probationary employees shall have the right to submit applications or forms provided by the Company for temporary vacancies in sequences within their department between January 1 and January 15, and between July 1 and July 15 of each year. Promptly following the close of each such application period, the manager of the department shall post, for a period of not less than seven (7) days, a list of the applicants and sequences applied for which are currently on file in the department. Copy of such list shall be given to the area grievance committeeman.
(1) Employees other than probationary employees absent from the plant during the entire period between January 1 and January 15 because of sickness, injury, vacation or leave or the entire period between July 1 and July 15 shall be permitted to enter application(s) within the first fifteen (15) days following such sickness, injury, vacation or leave.
(2) Employees other than probationary employees transferring from one department to another on labor reserve assignment, and assigned to a job in a seniority pool (other than his regularly assigned department), or displaced and subsequently relocated in another department shall be permitted to enter application(s) within the first fifteen (15) days following the completion of thirty (30) days' assignment to a department.
An employee with standing in a multiple or single job sequence shall not have more than two (2) and an employee without standing in a sequence shall have no more than three (3) such applications on file at any one time. Probationary employees shall be entitled to apply for entrance into three (3) sequences during the first two (2) full calendar weeks after completion of their probationary period. The employee shall state his order of preference. An employee established in a sequence shall designate his established sequence first, followed by his applications in his order of preference. An employee shall be scheduled in his established sequence first unless his application preference(s) provide a minimum of forty (40) hours for a payroll week when during such payroll week his established sequence does not provide a minimum of forty (40) hours. The departmental management shall maintain and post, with the sequences, lists of employees requesting temporary vacancies in the respective sequences. Where there are no applicants for a sequence, notice thereof shall be posted by the Company and any employee may cancel one of his applications and replace it with an application for such sequence.
An employee who cannot be assigned to his established sequence, any of his application preferences or the labor pool in accordance with the provisions of this Article due to a medical condition and who otherwise would be medically laid off shall be allowed to temporarily apply for entrance into a sequence in his department where work is available within his medical restriction. Such temporary application shall be cancelled immediately upon removal or modification of said medical restriction which would allow such employee to be able to work in his established sequence any of his application preferences or the labor pool.
An employee entitled to be scheduled in a sequence to fill a temporary vacancy of at least five (5) days' duration in the payroll week who refuses such an assignment, and an employee who is assigned to or established in a sequence and requests demotion or is demoted from the sequence, pursuant to Article 13, Section 8-b, shall have his application for the sequence cancelled and shall be barred from reapplying for that sequence until the first regular application period occurring six (6) months thereafter. (Emphasis added to denote new language inserted into the August 1, 1986 Collective Bargaining Agreement).
Section 8. Other Conditions Affecting Sequential Standing
a. Employees on leave of absence, employees who are temporarily unable to promote or inactive because of established bona fide illness, employees temporarily demoted for cause, disciplined with time off, or temporarily demoted to a lower job at their own request for good cause, shall upon return, resume their former position in the sequence in accordance with the provisions of this Agreement.
b. Employees who, for good and valid reason, have or shall request permanent demotion to a lower job may later change their minds, or employees who have been, or are denied promotion in accordance with the

provisions of this Article, and employees demoted for cause under Article 3, may later correct the cause of such action. In such cases the employees shall again be considered eligible for promotion, but they shall not be permitted to challenge the higher standing on the jobs above of those who have stepped ahead of them until they have reached the same job level above, by filling a permanent opening, as those who have stepped ahead of them.

c. Craft journeymen required to pass a test(s) in order to qualify for promotion to a position rated above the craft shall be allowed up to six (6) months to qualify after becoming eligible to take such promotional test(s). If journeymen fail to pass or elect not to take such promotional test(s) within the six (6) month period, the provisions of b above shall apply. (Emphasis added to denote new language inserted into the August 1, 1986 Collective Bargaining Agreement).

The Grievant filed a Step 1 oral complaint on July 8, 1987 claiming that he should be allowed to withdraw from the Conditioning Sequence whenever he chose. After unsuccessful attempts at resolution in the oral steps of the grievance procedure, a written grievance was filed on August 3, 1987, alleging that the Company violated Article 3, Section 1 and Article 13, Sections 3 and 4 of the Collective Bargaining Agreement and requesting that the Grievant be allowed to exercise his rights to withdraw from the sequence and be paid all monies and benefits lost due to the Company's denial.

Issue

Whether the Company violated Article 3, Section 1 or Article 13, Sections 3 and 4 of the August 1, 1986 Collective Bargaining Agreement when, on June 8, 1987, it denied a request by D. Grudizion to withdraw from the Finishing Sequence.

Discussion

Probably no function of the Arbitrator is more important than that of interpreting the Collective Bargaining Agreement. In that regard, there is no need for interpretation unless the agreement is ambiguous. As stated in Elkouri & Elkouri, How Arbitration Works, BNA, 4th ed., 1985, p. 342:

An agreement is not ambiguous if the Arbitrator can determine its meaning without any guide other than a knowledge of the simple fact 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 rather 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 be doubtful from lack of harmony in its various parts. [citations omitted]

Article 13, Section 4 of the Collective Bargaining Agreement states:

Employees who have acquired sequential standing as of the day prior to the date of this Agreement shall retain such standing unless cancelled or modified in accordance with the provisions of this article.

The above language clearly indicates an intent to allow employees who have acquired sequential rights to retain those rights. One of the major purposes of retention rights is to ensure stability in the performance of sequential jobs in light of an employee's training and already acquired efficiency.

Article 13, Section 4 also states that:

An employee who is established in a sequence and requests demotion from the sequence shall have any sequence standing in that sequence cancelled immediately subject to restoration pursuant to Article 8-a of Article 13.

This provision expressly qualifies the right to demote at will by reference to Article 13, Section 8-a, which states that employees may be "temporarily demoted to a lower job at their own request." However, the right of employees to demote at their own request is qualified by the phrase "for good cause."

The "good cause" provision of Article 13, Section 8-a, has been interpreted by the Company to mean illness, personal crisis or some other serious impediment to an employee's job performance that is beyond the employee's control. Contrary to the Union's claim, the Company has neither interpreted nor applied the good cause provision to mean that an employee would have the opportunity for a temporary economic advantage. Furthermore, the Union has never before challenged this interpretation of "good cause" by the Company.

Prior to August 1, 1986, an employee with sequential standing would have had almost no reason to exercise his Article 13, Section 8-a right to temporarily demote to a lower job, at his own request, for good cause based on an economic advantage. Under the application system set forth in Article 13, Section 6-e, an employee, including an employee with sequential standing, is allowed to fill temporary vacancies within a sequence, often a sequence other than one in which the employee has sequential standing. Prior to August 1, 1986, an employee who had sequential standing established in sequence "A" could submit applications to

fill temporary vacancies in sequences "B" and "C". If the employee was the senior applicant and a five (5) day vacancy known at the time schedules were posted existed in sequence "B", then the employee would be scheduled to fill that vacancy. The employee would be in sequence "B" even though a five (5) day vacancy known at the time schedules were posted existed in sequence "A" in which the employee had acquired sequential standing. Thus, in many instances, employees were able to fill these temporary vacancies at a rate of pay higher than the rate which they would otherwise expect to earn while working in their established sequential positions.

The frequent absence of employees from their sequentially established positions because of their right to fill temporary vacancies under the application system set forth in Article 13, Section 6-e led the Company to submit a demand in the negotiations preceding the August 1, 1986 Agreement which would establish a so called "work at home" provision. This provision permitted employees to continue to fill temporary vacancies pursuant to the applications provisions only if the temporary vacancy opportunity provided forty hours of work while the work opportunity in the sequence in which the employee had established sequential standing offered less than forty hours of work in the work week. However, if forty hours of work in the work week were available in the sequence in which the employee had established sequential standing, the employee could not exercise the previously existing right to promote to fill a temporary vacancy in another sequence in accordance with his application. Thus, even if an employee had a greater earning opportunity outside of his "home" sequence in the temporary vacancy to which he would have otherwise promoted under the old language, the employee could not promote if forty hours of work was available in his established sequence.

Accordingly, it is clear that the changes in the August 1, 1986 Collective Bargaining Agreement designated preference for employees to work in their "home" sequences where they have established sequential standing and to reduce the movement of employees associated with the application system. Therefore, the August 1, 1986 Collective Bargaining Agreement and the language in Article 13, Section 6-e cannot be read to allow employees to demote, at their request, from their established sequential positions in order to fill temporary vacancies in sequences other than one sequence to which they are established simply because of an economic opportunity.

The only provision which permits an employee to relinquish his sequential standing is Article 13, Section 8-b, which permits an employee to permanently demote from his job in a sequence. Historically, the Company had interpreted this provision to include an implied limitation that the request for demotion had to be supported by good and valid reasons. During the negotiations of the August 1, 1986 Collective Bargaining Agreement, the parties explicitly included the phrase "for good and valid reason" in Article 13, Section 8-b to qualify the language concerning requests for permanent demotion to a lower job.

The phrase "good and valid reason" had been in Article 13, Section 6 since the September 1, 1965 Collective Bargaining Agreement. In the past, the phrase had been consistently interpreted and applied in Article 13, Section 6-g to mean illness, personal crisis or other reasons beyond the employee's control which pose a serious impediment to the employee's continued job performance in the job in which he is permanently established. Historically, the phrase has not been interpreted to include economic advantage. Thus, it is clear that by the insertion of this same phrase in Article 13, Section 8-g, the parties intended the same restriction to apply to requests for permanent demotion which have historically applied to requests for waivers of promotion.

Accordingly, for the reasons stated herein, the Collective Bargaining Agreement restricts an employee's right to relinquish sequential standing so that employees do not have the right to relinquish their sequential standing merely at their own request. Thus, there was no violation of the Collective Bargaining Agreement for the Company to deny the Grievant's request to relinquish his sequential standing in the Conditioning Sequence merely to gain an economic advantage by filling temporary vacancies in the Cranes Sequence at a higher wage rate.

AWARD

For the reasons stated herein the grievance is denied.

/s/ Herbert Fishgold
Herbert Fishgold
Arbitrator
Washington, D.C.
September 9, 1988