Arbitration Award No. 793
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 28-R-45
Arbitrator: Clare B. McDermott
Opinion and Award
March 14, 1989
Subject: Local Working Condition--Early Wash-Up Time.
Statement of the Grievance: "The Company violated the contract when it summarily eliminated the established practice of providing a 15 minute washup time for the Mechanics at No. 3 Cold Strip East. The practice is of longstanding and is entitled to the protection under Article 2, Section 2 of the contract.
"RELIEF SOUGHT The practice be honored and the affected incumbents in the Mechanical sequence paid any and all monies lost.
"VIOLATION IS CLAIMED OF ARTICLE 2, SECTION 2, and
ARTICLE 3, SECTION 1."
Agreement Provisions Involved: Article 2, Section 2-d of the August 1, 1986 Agreement.
Statement of the Award: The grievance is sustained to the extent that the local working condition shall be restored, as stated in the accompanying Opinion, but no monetary relief is awarded.
Chronology
Grievance Filed: 2- 8-85
Step 3 Hearing: 1-15-86
Step 3 Minutes: 4-16-86
Step 4 Appeal: 4-28-86
Step 4 Hearings: 6-2-88, 6-17-88, 6-24-88
Step 4 Minutes: 7-1-88
Appeal to Arbitration: 12-1-88
Arbitration Hearing: 12-8-88
Appearances
Company
Robert B. Castle, Section Manager, Union Relations
Thomas Smith, Maintenance Section Manager, #3 Cold Strip Intermediate Products
Thomas Arborgast, Maintenance Engineer, #3 Cold Strip Intermediate Products
John Gordon, Maintenance Planner, #2 BOF/CC
Joseph Santini, I/N Tek, Equipment Control Manager
Union
Jim Robinson, Arb. Coordinator
F. Kinsey, Griever
F. Borjas
D. Rimschneider
D. Newman
J. Burt
P. Midkiff
BACKGROUND
This grievance from the Mechanical Sequence of No. 3 Cold Strip East Department claims that Management's discontinuing a ten-minute, early wash-up local working condition at turn's end violated Article 2, Section 2-c and -d, and Article 3 of the August 1, 1986 Agreement.
There was some disagreement in the grievance proceedings as to whether the time period was fifteen or ten minutes, but the Union later agreed it was ten minutes before the end of the turn. The Company agrees that from 1972 to just before this grievance in 1984 an early wash-up policy was in effect for some of these Mechanical Sequence employees. Under it time cards were distributed ten minutes prior to the end of the turn, but Management insists this was limited to steady day-turn employees, who normally do not require

on-the-job relief because their tasks usually do not carry over to other turns, as shift workers' assignments do.
The Company does not say that the ten-minute early wash-up policy did not apply at all to shift employees, but it insists that, although time cards were distributed ten minutes early for shift employees, too, they could not leave then until relieved on the job by the incoming employee.
The Union claims the local working condition was not so confined but applied to all Mechanical employees, but it, too, agrees there were conditions, that is, the early wash-up did not apply in case a breakdown were being worked on at the time, in which situation employees understood the necessity to remain at work until the problem was corrected or until a relief employee took over for the following turn.
The Company argues that even the limited early-wash-up arrangement it admits was established by Management discretion and that its continuance was based expressly upon absence of employee abuse. The Company contends that in November of 1984 it became convinced that employees were abusing the policy and, therefore, Management discontinued it. This grievance followed.
Union testimony said the early wash-up local working condition existed for about fourteen years, surely long enough to have earned protection under 2-2-c and -d of the Agreement.
The Union introduced a VODG (Verbal Orders Don't Go) of January 17, 1972, reading as follows:
"VERBAL ORDERS DON'T GO
"TO ALL MECHANICAL PERSONNEL
DATE JANUARY 17, 1972
"AT PRESENT, YOU HAVE BEEN RECEIVING YOUR CARDS AT 10 MINUTES TO THE HOURS OF 3:00 P.M., 11:00 P.M., & 7:00 A.M. IF YOU INTEND TO KEEP RECEIVING YOUR CARDS AT THIS TIME YOU WILL BE EXPECTED TO BE AT YOUR ASSIGNED JOB SITE READY TO WORK ON THE HOUR (3:00 P.M., 11:00 P.M., & 7:00 A.M.). THESE ABOVE TIMES ARE NOT TO BE DEADLINES FOR SIGNING IN. ALL MECHANICAL PERSONNEL WILL BE EXPECTED TO BE SIGNED IN AND READY TO WORK AS NOTED OR NECESSARY ACTION WILL BE TAKEN. ALSO, THERE WILL BE NO CONGREGATING AROUND THE CARD RACK PRIOR TO IT BEING OPENED. IF THIS PRACTICE CONTINUES THE CARD RACK WILL NOT BE OPENED BEFORE THE HOURS OF 3, 11, AND 7.
SIGNED
J. SANTINI-GENERAL MECHANICAL FOREMAN"
The Union is sure that Company statement establishes its case here. It argues also that the claimed local working condition was established by Management in return for employees being out at the job site and ready to work at the beginning of the turn, and not just having punched in on time. It contends that the Company still continues to insist that employees be ready to work at the beginning of the turn but that it has discontinued the quid pro quo for the early wash-up.
The Company refers to the sentence in the General Foreman's 1972 VODG, to the effect that all Mechanical personnel were expected to be signed in and ready to work, ". . . or necessary action will be taken." That is said to support the Company's view that the arrangement was begun at the discretion of Management and that it would be discontinued if it were abused. It denies that the early wash-up arrangement was based in any way on a requirement that employees be at their work site at the start of the turn. It insists it has a right to demand that, without having to give up this early wash-up arrangement.
Management cites disciplinary action taken against three employees in 1978 and 1980 for being away from their work area and in the locker room fifty, forty-five, thirty, and twenty minutes before the end of the turn. This is urged as showing employee abuse of the arrangement and Management's reining it in.
The Union argues that occasional discipline of employees for leaving their work area long before the allowed ten-minute period could not undercut the ten-minute local working condition.
Company witness Santini was General Foreman of these operations from 1969 when they began. He started the early wash-up arrangement. He explained that when No. 3 Cold Strip started up, many Mechanical employees were obtained from Nos. 1 and 2 Cold Mills and from the Tin Mill. Those employees had been geographically located much nearer to the Plant 2 Gate, and no bus service had been necessary for them. Upon moving to No. 3 Cold Strip, however, they were much farther out on the north end of Plant 2 and from the gate. The bus left at 3:15 p.m., for day employees, for example. Santini said, if they had to work right up to 3:00 p.m., the time necessary for them to get to their locker room, change clothes, and get to the bus would prevent them from catching it. The next bus did not come for another one and one-half hours. Santini said he and Labor Relations, upon being approached by Union representatives, thus saw, this as a change in a significant aspect of those employees' schedules. They therefore decided to distribute time

cards at 2:50 p.m., which thus would allow those employees time to catch the 3:15 p.m. bus. Santini said his 1972 VODG made it clear that, if the employees left before the ten-minute period, the policy would be discontinued. There was no reference in this record to any changes in bus times.

Santini explained that this system experienced periods of employee compliance, followed by Supervisory correction. The arrangement then would go along satisfactorily for awhile and then abuse would arise and would be corrected by Management.

Santini denied that the employees being ready at the work site played any part as a trade-off in return for this policy. He said the ten-minute early arrangement was not called "wash-up" in the beginning, because it was related to necessity to have time to catch the 3:15 p.m. bus. It is agreed that, on occasion when the foreman was not there to distribute time cards at 2:50 p.m. and employees had to stay until 3:00, no employee ever received overtime for those ten minutes. In contrast, when employees were required to work beyond 3:00 p.m., they were paid at overtime for every one-tenth of an hour beyond 3:00 p.m.

Santini agreed that operation of the policy was not put on a strict, person-to-person, face-to-face relief arrangement. It was a looser system, in which, if the foreman thought sufficient employees had reported to run the incoming turn satisfactorily, he would allow ending-turn employees to leave ten minutes early even if not all had been relieved. If he thought not enough relieving employees had come in, he would hold the cards until the hour.

Company witness Arbogast, who was General Foreman of these base operations in 1984, said he eliminated this arrangement because he heard there was widespread abuse of it. He said Supervision had cried to control it for fourteen years but apparently could not, so he decided it was not controllable, and he stopped it. Arbogast agreed that he had taken no disciplinary action against any individual employee, amid all the alleged abuse, aside from oral reprimands and from docking this or that employee whom he caught in the locker room sooner than ten minutes before the end of the turn.

Union witnesses said that from the very beginning all Mechanical employees were given time cards, ten minutes before the end of the turn. Shift employees then were on an honor system as to not leaving before their relief was present.

A Union witness said that when this practice was eliminated in 1984, then Section Manager Smith said he simply did not believe in a ten-minute early wash-up policy, that employees were paid for eight hours and, therefore, should work for eight hours.

Smith testified later that he did not come to this operation until May of 1985, by which this arrangement already had been stopped, so that he would have had no occasion to speak of why it had been discontinued earlier.

The Company agrees that there was such a practice to straight-day employees, and that they did not have to be relieved, but it insists that, too, was stated as being subject to the condition that it not be abused. It argues, therefore, that, with a conditional local working condition and with the condition no longer being met, it was entitled under 2-2-d to eliminate the local working condition.

As to shift employees, the Company argues that, because, even though cards were given out at ten minutes before the hour, the employee could not leave unless his relief were there, there was no local working condition that could be enforced.

FINDINGS

There can be no rational doubt that a local working condition had developed over the earlier years. Its contours are in dispute, and they will have to be determined here, but it is clear and admitted that a local working condition of some kind had existed.

Its clearest application was to straight-day employees. The evidence from both parties agrees they were given time cards ten minutes before the end of the turn and were allowed to leave then and, as to them, there was no specific relief connection.

The Company insists, however, that even that local working condition was conditional in its origin on Supervisory discretion and in its continuance on absence of abuse.

The discretionary argument is not supported by any evidence, however, and the abuse position would not justify elimination of an established local-working condition, in any event, absent stronger evidence than is here that the local working condition was based on nonabuse at its origin. That is, abuse of any condition of employment must be dealt with by Management's disciplinary authority, against those employees who are guilty of abuse. Employee abuse, slight or gross, must be dealt with individually and cannot justify eliminating benefits of all employees, both those guilty of abuse and those who are innocent. That would be too similar to "taking hostages."

Moreover, discipline of employees who left sooner than ten minutes before the end of the turn is no evidence of change or elimination of a local working condition which, had allowed them to leave ten minutes before the turn would end.

In any event, even Company evidence shows no "change of basis" as to abuse levels. It shows only that then General Foreman Arbogast had a "perception" that abuse had increased. But that apparently had been pulsating on and off over all the years of the local working condition from the early 1970s, and Management had dampened it as the need to do so had arisen. Accordingly, abuse, even had it been shown to have increased significantly, would not afford Management the right to eliminate this local working condition under 2-2-d. Thus, the ten-minute early wash-up must be restored to these straight-day Mechanical employees.

There was dispute as to shift employees. But the clear burden of all evidence from both parties was that they, too, were given time cards ten minutes early and were allowed to leave, if their more specific relieving employee were there. But, even that was not administered strictly on a one-to-one basis. Most turn foreman dealt with it by deciding whether significant employees (six or eight) from the incoming turn were present and, if they were, that was seen as adequate initial coverage and all shift employees then were allowed to leave. That local working condition, too, must be restored.

Union arguments about the necessity for incoming employees to be ready at the site as a trade-off, for existence of this local working condition, were not supported in the record. That does not matter, however, for Company evidence is sufficient, when considered with persuasive Union testimony, to support existence of the local working condition, even without such a quid pro quo.

Union arguments request a remedy of pay for "all monies lost," referring to the ten minutes which employees were required to spend at the site instead of in the locker room getting ready to leave. It was said that the Company had eliminated this local working condition arbitrarily and in the cynical belief that it simply had nothing to lose.

That could not be adopted here, however. The telling reason for denying the request for monetary relief is that no monies were lost by anybody. All grievants always were paid until the turn-change hour and, thus, they lost no monies, and there was no loss for which compensation could be required.

AWARD

The grievance is sustained to the extent that the local working condition shall be restored, as stated in the accompanying Opinion, but no monetary relief is awarded.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator