

Arbitration Award No. 812
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 31-S-35
Arbitrator: Clare B. McDermott
Opinion and Award
September 5, 1990

Subject: Temporary Transfer--Assigned Maintenance Agreement.

Statement of the Grievance: "Management has improperly assigned Mechanics to the M.M.D. [eight named grievants] and subsequent employees who may be put into the M.M.D. as temps. until grievance is resolved.

"Relief Sought Return those employees to their sequence and make whole.

"Violation is Claimed of Article 2, Section 2, Appendix N, AN.9, and Craft Manual 5."

Agreement Provisions Involved: Assigned Maintenance Agreement of Appendix N to the August 1, 1986 Agreement.

Statement of the Award: The grievance is denied.

Chronology

Grievance Filed:	7-11-88
Step 3 Hearing:	10-03-88
Step 3 Minutes:	12-16-88
Step 4 Appeal:	12-19-88
Step 4 Hearing:	9-22-89
Step 4 Minutes:	9-22-89
Appealed to Arbitration:	9-19-89
Arbitration Hearing:	9-28-89

Appearances

Company

R. V. Cayia -- Section Mgr., Union Relations
Rene Vela -- Section Mgr., Operations Representation, Union Relations
Ken Kantowski -- Manager, Mobile Maintenance Services (MMD)
Steve Booker -- Section Mgr., Maintenance, No. 7 Blast Furnace
Kathy Koch -- Representative, Human Resources Information System, Personnel
R. B. Castle -- Manager, Union Relations

Union

J. Robinson -- Arbitration Coordinator
M. Mezo -- President
D. Lutes -- Sec. Gr. Comm.
D. Walton -- Griever
R. Flahardy -- Griever
R. Persons
J. Turner
R. Friant
D. Wozniak

BACKGROUND

This grievance from Indiana Harbor works claims that Management's temporarily transferring the eight least senior Mechanics in No. 7 Blast Furnace Maintenance Department Mechanical Sequence to the Mobile Maintenance Department violated Article 2, Section 2 of the August 1, 1986 Agreement, the Assigned Maintenance Agreement, attached to the Basic Agreement as Appendix N, and Craft Manual 5. The four Union charges are (1) that those eight employees were "laid off," in violation of the Company's commitment in AN.2.1 not to lay off List A employees, which they were; (2) that the Company did not first seek to get volunteers plantwide for these assignments; (3) that the Company must assign those employees

least senior in plantwide seniority and that it was not enough that these eight transferees were least senior in the No. 7 Blast Furnace Mechanical Seniority Sequence; and (4) that there were laid-off employees who were not recalled or solicited for these temporary vacancies.

The Company says that before the 1986 Agreement it was convinced it was not doing all the maintenance work that should be performed on downturns, even though each mechanical sequence allegedly was manned for such peaks of activity. Thus, even though not enough maintenance was being done on downturns, the Company says the sequences had more employees than were needed for routine, day-to-day, operating-maintenance work. Management thus wanted a smaller day-to-day assigned maintenance force, but with ability also to call on a much larger, roving maintenance force to supplement assigned-maintenance forces in this or that area, as needed for expanded downturn maintenance work, which larger force then would work elsewhere at other times.

Prior to the August 1, 1986 Agreement, there were no contractual restrictions on Management's right to reduce maintenance forces in the plant. Effective with the August 1, 1986 Agreement, the parties entered into an Assigned Maintenance Agreement, attached as Appendix N.

It said that they recognized the need substantially to improve efficiency and productivity at the plant, while assuring employment security for assigned-maintenance employees. They thus agreed to establish a new Mobile Maintenance Department (hereafter MMD) and that its purpose would be to supplement mechanical, electrical, and welding maintenance work associated with scheduled repair downturns in the various departments and to minimize use of outside maintenance forces. In exchange, certain employment guarantees were provided.

One stipulated that craft employees actively working as of April 15, 1986 would not be laid off as a result of the MMD or the Assigned Maintenance Agreement, except as a result of department shutdowns, technological changes, or decreased operations within a department. Those craft employees actively working as of April 15, 1986 were listed on Attachment A, and they became known as List A employees. The Company committed itself also to establish and maintain a minimum base force complement in all assigned mechanical, electrical, and welding sequences (expanded to additional sequences by a contemporary letter) and not arbitrarily to reduce them below 67 percent (rounded to the nearest whole number) of the number of employees in each maintenance sequence on List A. That 67 percent figure is known as the "minimum base force complement."

The MMD was to be manned both by employees established there on a permanent basis and by employees assigned there temporarily. Permanent employees were to be established by plantwide bidding. The very generalized method for filling temporary vacancies was set out in paragraph AN.9, reading as follows:

"8. Temporary Vacancies

AN.9 Temporary vacancies in the M.M.D. shall be filled by volunteers. All assigned maintenance craftsmen who wish to fill temporary vacancies shall make use of an application system to be established by the parties for this purpose. In the event additional vacancies must be filled, the Company may assign on a temporary basis an employee other than those protected in the minimum base force, from any department identified in Attachment A to the M.M.D. The manner in which employees are selected for such assignment will be in reverse order of seniority so that the most junior employees from the affected sequence(s) are assigned. Such assignment will not alter said employee's rights in his established sequence."

The Company describes the employee response to moving to the MMD as less than enthusiastic. Ninety Mechanical permanent vacancies were posted and were filled from two hundred bidders. Employees who bid for MMD permanent vacancies and who were selected had a right to return to their old units within thirty days, and many did.

The Assigned Maintenance Agreement establishes the method for filling permanent vacancies in MMD but, as to temporary vacancies, it referred to an "application system." Although the parties thereafter met and discussed the details of such a system, they had not agreed on one by March of 1988. On List A for the No. 7 Blast Furnace Maintenance Department Mechanical Sequence there were eighty-three Mechanics, and that established a minimum base force of fifty-six Mechanics there.

In March of 1988 the MMD (the Company says it still was growing then) required eight additional Mechanical employees. The Company says it temporarily transferred the eight most junior Mechanics established in the No. 7 Blast Furnace Mechanical Sequence to the MMD. This grievance followed in July. The Union charges that grievants lost earnings by reason of their reassignment, as shown by average-earnings data for the six pay periods ending July 1, 1989.

The Union stresses that the paperwork covering these events said grievants were on "LAYOFF," "craft reassignment," and each was given a "RECALL NOTICE." The Union thus concludes that grievants were "laid off," in violation of AN.2.1, saying that they, as List A employees, shall not be laid off, absent certain conditions, which did not occur here.

The Company denies that grievants were laid off. It emphasizes that its computer (Manpower Information System) was installed in early 1980, and it says it simply did not have the capability to list a single seniority transaction showing that grievants actually were temporarily reassigned from No. 7 Blast Furnace Mechanical Sequence to the MMD, without first stating a layoff from the first unit. Management stresses that even the computerized documents relied upon by the Union for its "layoff" argument say that grievants were "laid off" as of "4/3/88" and were "recalled" to the MMD at 7:00 a.m. on "4-4-88," the next day. The Company thus contends that grievants were not laid off, since they never were off work, missed no work, and had forty hours in each of the weeks involved. Management says that in order to be laid off an employee must be off work. Grievants never were.

The Union next argues that paragraph AN.9 shows that, before assigning craftsmen to the MMD, Management must first seek volunteers for the assignments from across the plant. If it does that but does not get sufficient volunteers, it then, and only then, may reassign others, says the Union.

The Union urges also that the employees so reassigned must be the most junior employees as measured plantwide and that it was not sufficient to reassign, as the Company did here, the eight most junior in this one seniority sequence. In this regard, it notes that paragraph AN.9 says the employees selected for temporary MMD vacancies are to be ". . . the most junior employees from the affected sequence(s) . . ." That is said to indicate that the comparison of seniority for employees selected for temporary assignment to MMD must be made over more than one sequence, that is, plantwide.

Finally, it came out at the hearing that there were Mechanical employees on layoff from various sequences, and yet they had not been canvassed as to whether they would have wanted to be recalled and assigned to the MMD. The Union insists these reassignments thus were improper. Since those employees were on layoff, the Union is sure they were not needed by their departments. The latter point was in reply to Company arguments that plantwide solicitation was not needed here because there was no indication that any other departments could spare any of their Mechanical employees.

Management insists that no language in the Assigned Maintenance Agreement requires it to solicit volunteers from across the plant before temporarily reassigning any employees to the MMD.

The Company sees no language in that Agreement to require that it reassign employees to the MMD in order of plant seniority, considering employees plantwide. It says there is no obligation on Management to allow even a voluntary transfer to the MMD if the employee's home department is unable to release him because of operating needs there. To make such reassignments solely on the basis of plant seniority, without regard to operating needs of the home department, would deplete certain departments of the craftsmen they need, urges the Company.

Management says that following reline of No. 7 Blast Furnace, the Department realized it would need fewer craftsmen to maintain the newly reconditioned furnace. It thus had more employees than it needed. All No. 7 Blast Furnace Mechanical Sequence employees were solicited for these transfers, but none volunteered. Thus, the eight most junior, and not within the protected 67 percent base-force complement, were reassigned, since they could be spared.

Management stresses that when the parties intended a plantwide seniority comparison, they have known how to say so in clearer language than that relied upon by the Union here, which is the "affected sequence(s)." It notes, for example, that Appendix S, regarding posting of entry-level jobs, says jobs shall be filled from bidders who apply ". . . on a plantwide basis." The Company points to other such Agreement provisions.

FINDINGS

It is not disputed that "additional vacancies" had to be filled here; that grievants were not among the 67 percent base-force complement; that No. 7 Blast Furnace is an identified department in Attachment A of Appendix AN; that grievants were most junior in No. 7 Blast Furnace Mechanical Sequence; or that grievants' seniority rights in their home department were not affected by this temporary reassignment and that they continue to retain their sequential standing there. Thus, to the extent that they may have been prerequisites to these temporary transfers, they were satisfied.

Moving to what is disputed, it is obvious that the reality of this event is that grievants were not laid off. They worked a full forty-hour week in No. 7 Blast Furnace and then immediately began and worked another full forty-hour week in the MMD. That is not being laid off.

The paperwork, because of inability of the computer to state in one expression a reassignment from one sequence to another without any interruption in work, did state the word "Layoff." But it would be honoring mere accidental form and ignoring solid substance to conclude that grievants thus were laid off. That would have put them to the street, in a state of temporary unemployment during which they would have become eligible for benefits. With the computer equipment on hand, there was no other way to explain this event on paper than to say "LAYOFF," but it is clear that was only the computer's formal way to record an event that had no substance or even accidents of layoff about it. The paper record could not have been different even if these transferees had been volunteers.

The stated purpose of the Assigned Maintenance Agreement is to improve efficiency and productivity of the Harbor Works. If Management were required to transfer employees to the MMD temporarily only after making a plantwide comparison of seniority, efficiency and productivity would not be improved because that would take employees from units that could not afford to let them go. That is, if a department A employee were most junior and were willing to transfer but the department could not release him, it would not improve efficiency or productivity to require that he be let go. Moreover, the Agreement language says employees selected will be the most junior ". . . from the affected sequence(s) . . ." While that might not be conclusive support for the Company position, it gives none to the Union claim. What does give persuasive support for the Company position is shown by the several examples of Agreement language saying expressly that plantwide considerations were to govern in cases where the parties intended to follow that system. That shows they knew how to do that when they so desired. They did not do so here.

The same analysis applies to the argument that Management could have made these reassignments only after making and failing in a plantwide solicitation for volunteers. That, too, would strip some units of needed employees. The Company notes also that there is no absolute employee right to make these temporary transfers, but only to apply for them.

It perhaps should be noted that the parties never have been able to agree on the "application system" to be used for administering these temporary assignments to MMD. Thus, any lack of clarity in administering these events is not surprising.

In any event, the Company did solicit for volunteers among all employees in the No. 7 Blast Furnace Mechanical Sequence, the only one in which there was any indication of departmental willingness to let employees go, and it made informal inquiries of the Section Managers of each other assigned-maintenance department to learn if they could afford to let their Mechanical employees go to MMD. Aside from No. 7 Blast Furnace Mechanical Sequence, no other sequence was willing to let its Mechanical employees go. All the other departments needed all the Mechanical employees they had.

The Company notes also that there is no record of any employee in any department complaining that he wanted to be assigned to MMD but that he was not allowed to volunteer. The Company thus argues that the Union has not shown that any volunteers existed who could have taken grievants' places. It says that would be a precondition to awarding any monetary relief here.

The Union then noted at the hearing that there were employees on layoff, who must not have been needed in their sequences. They were not canvassed.

The Company stresses, however, that no laid-off employees have grieved here.

It is true that the first two sentences of AN.9 say that temporary vacancies shall be filled by volunteers and that all assigned maintenance craftsmen who wish to fill such temporary vacancies shall use an "application system" to be established for that purpose. The first step thus is to make use of volunteers and by an application system to be established.

But the parties had not established any such system as of the time of this event.

The last two sentences then deal with getting the needed employees for filling temporary vacancies in MMD after the voluntary system has been employed but without producing the needed number of employees. In that situation the Company may assign certain employees on a temporary basis, by reverse seniority so that the most junior employees from the affected sequence(s) are assigned. Those words indicate that the employee so solicited could be from one "sequence" or from several or all "sequences." The Union contends, however, that, whatever faults of omission the parties jointly may have committed, in not establishing an agreed upon "application system," Appendix AN.9 still requires that the volunteer system be tried and exhausted under the first two sentences before Management may assign employees on its own under the next two.

This problem of the laid-off employees who were not canvassed might be troublesome in some other record. It seems clear enough, however, that it was not thought of as critical or of any significance here, since nothing was said about it in the grievance proceedings, and it was not brought out in fact until cross

examination of the Company witness. In light of that approach, it cannot be allowed to be determinative here, especially since there is no evidence that any such employees have complained and since both parties have failed in establishing an "application system" that well might have clarified all this by providing a ready list of volunteers.

It may be worth stating that this is the first dispute about the Assigned Maintenance Agreement that was brought to arbitration. It is appropriate also to say that this ruling is limited to the particular facts of this case and is not meant as a definitive resolution of all or any other MMD problems under different circumstances.

Perhaps it should be noted also that there was no evidence to support the charge of violation of Article 2, Section 2.

Accordingly, the grievance will be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator