

Award No. 831
ARBITRATION
INLAND STEEL COMPANY
(Indiana Harbor Works)
and
UNITED STEELWORKERS OF AMERICA
(Local Union 1010)

Arbitration No. 1442
Arbitrator: Robert T. Moore
September 5, 1990

OPINION AND AWARD

Appearances:

For the Company:

**Robert B. Castle, Manager, Union Relations
*Harold F. Kaiser, Gen. Mgr., Flat Roll & Coated Products
*Rene Vela, Section Manager, Union Relations
*Bernie Mastey, Section Manager., Temper Finishing West, No. 3 Cold Strip Mill
*Gary Van Asperen, Manager, Coated Products
Michael D. Krushaar, Project Analyst-Tactical Planning, Operations Planning
Kevin McKenna, Senior Representative, Union Relations

For the Union:

**Jim Robinson, Arbitration Coordinator, Local 1010
*Ted Rogus, Sub-District 2 Director, District 31
*Tom Zaborski, Grievanceman, Local 1010
*Ken Merrill, Union Officer, Local 9231 (I/N Tek)
*George Tobias, Roller, No. 28 Temper Mill, Local 1010
*Howard Hendricks, Craneman, Local 1010

Juan Casas, Jr., Local 1010 Member

Doug Ferry, Local 1010 Member

Mara Longoria, Local 1010 Member

J. E. Landers, Local 1010 Member

** Presented case.

*Testified.

ISSUE RAISED:

The parties have stipulated to the submission of the following issue to this arbitration:

Is the Mutual Agreement limiting No. 3 Cold Strip Temper Mill Sequence permanent vacancies to a combined total of twenty (20), valid and enforceable under the terms of the applicable provisions of the 1989 Collective Bargaining Agreement?

BACKGROUND AND HISTORY:

To understand the issue, the present seniority system at the Indiana Harbor Works needs to be placed in its historic context.

Prior to 1977, the length of service measure in effect at the Works for purposes of promotion, retention, and other seniority events within a promotional sequence, was based on an employee's first day worked on a permanent vacancy basis in the sequence. For purposes of advancement, it was a last in, last to promote system. For purposes of avoiding layoff from the sequence, it was a last in, first out system.

Except for instances where employees waived promotions and remained by choice on lower jobs, or were demoted for inability to perform higher jobs, a seniority roster reflected a hierarchy with the employees having the longest continuous service in the sequence holding the top jobs and the younger employees claiming the lower jobs in descending order.

To have a claim to, or "standing," on a specific job in the sequence, an employee needed only to have worked the job a single turn on a permanent vacancy basis. Under this concept of "standing," it was quite possible to have more employees with entitlement to a job than were needed to perform the job. For example, a unit which normally worked only 5 turns a week, might go up to 10 turns for a short period to meet an immediate production need, only then to go back to its customary 5 turn level. This temporary increase in operations could produce an added employee with standing on each job in the sequence.

With a seniority system based on sequence service, this "overstacking" of persons with standing on jobs created little problem. When a unit with a normal 5 turn level of operation went to 10, and then back to 5, those employees rolled off jobs tended to be the very ones who had just promoted to them, since the sequence seniority measure kept the employees pretty much in line. Likewise, it would be the last employees into the unit who would be rolled to the Pool or the street, should the entry level vacancies created by the unit's increase in operations been filled on a "permanent" basis.

In short, by the nature of the system, when a temporary increase in operations ended, the employees of the sequence tended to return to their previous jobs, with the same more experienced employee on each job returning to that job. Likewise, when a unit experienced a reduction in forces or layoff, the subsequent restoration in forces tended to return the same experienced persons to the same jobs relative to one another as they had been working prior to the reduction.

In 1977, the seniority measure at the Works was changed to one based on each employee's total length of continuous service at the plant. Coupled with an expanded transfer system based on plant-wide postings of entry level vacancies, this change in seniority measure provided employees with a greater degree of self determination or control over their career destinies.

Any employee, who for any reason found his or her original home sequence undesirable, or simply wanted a change, could bid into a new unit and shortly thereafter exercises his or her total plant continuous service for purposes of future promotions and protection against layoffs and demotions. In time, they had a chance of rising to the level in the new unit which they could have expected to have obtained had that been their original home sequence.

These were the desirable consequences the 1977 changes were intended to have. However, if simply superimposed upon the then existing seniority rules, where any increase in operations created a permanent vacancy, and one turn worked on that vacancy gave an employee standing on the job and a right to it ahead of all others with standing but less plant service, the changes threatened two important interests; (1) operating efficiency, and (2) the legitimate expectations of employees that the changes in the system would not cause their demotions or layoff. These threats were not just hypothetical since, for all kinds of reasons, the seniority order of employees in very few units was the same when based on plant service as it had been when based on sequence service.

To protect these interests, the parties, simultaneous with the 1977 change in the service measure and the expansion of transfer rights, negotiated what is at present Section 6(c) of Article 13 of the 1989 Collective Bargaining Agreement. By that provision, permanent vacancies were redefined to exclude "operations beyond 15 turns in a non-continuous operation [i.e., not required to operate 24 hours a day, seven days a week], or 20 turns in a continuous operation [e.g., Coke Ovens and Blast Furnaces]."

That is, if a non-continuous operation went from 15 turns to 18 or 20, the extra turns would not create any additional permanent vacancies on the jobs in the sequence, nor result in any additional employees gaining standing on those jobs. When the unit went back to 15 turns, the employees stepped up to fill the additional vacancies would return to the jobs from which they came, even if they had more plant service than employees with previous standing on the jobs who would remain. Section 6(c) rendered the vacancies created by the extra turns "temporary."

While this provision generally fit the normal operating levels of the sequences to which it was applicable, the parties recognized that there were some operations which had either higher or lower levels of normal operations than those specified. Accordingly, the parties provided in what is now Section 6(d) of Article 13, for the negotiation of "Local Seniority Agreements," under which the responsible grievance committeeman and manager of the department in question could agree to a different level of operations as being the "normal level."

However, consistent with the purposes of the change to plant continuous service and the liberalization of transfer rights discussed above, Section 6(d) went on to provide that, "Any such agreement, to be valid and enforceable, must not unnecessarily restrict the transfer and promotional rights provided by this Article. . . ."

PRESENT DISPUTE:

In 1978, appropriate local Union and Company representatives in the No. 3 Cold Strip Mill entered into a Mutual Agreement under Section 6(d). They agreed to modify the 15 turn concept otherwise made applicable by Section 6(c) to the single promotional sequence containing the jobs of two separate non-continuous temper mill operations. The agreement provided in relevant part that, "Additional openings in existing occupations created by operations beyond 20 unit operating turns per payroll week on the combined units, i.e., No. 27 Temper Mill and No. 28 Temper Mill, are temporary."

The parties to this arbitration agree that at the time the Mutual Agreement was signed the requirements of Section 6(d) were met. The agreement did not "unnecessarily restrict" transfer and promotional rights, but was consistent with the objectives of both the basic seniority system changes and Section 6(c).

However, the present parties also agree that for the Mutual Agreement to remain "valid and enforceable," it had to continue to not "unnecessarily restrict" transfer and promotional rights. If circumstances have changed, and the combined "normal" levels of operations of the two mills have increased sufficiently to justify recognizing 5 or more additional "normal" turns per week, then the continued recognition of only a 20 turn level, and the resulting failure to promote or accord "standing" on higher jobs to additional employees, renders the agreement invalid and unenforceable.

Thus the present dispute is whether such a change in circumstances has occurred, and if so, whether it is sufficiently permanent so that the Mutual Agreement is no longer in effect. If the agreement is no longer in effect, the "normal" combined levels of operations for the two temper mills will become 30 turns (15 + 15 for the two non-continuous operations), as dictated by Section 6(c), and new "permanent" vacancies should be filled.<FN 1>

The Company contends that such a change in operating levels has occurred, and that the new higher levels will continue into the foreseeable future. For this prediction, the Company relies on its internal product market and economic forecasts and what it asserts are its long term plans for temper rolled steel throughout both the Indiana Harbor Works as well as its new I/N Tek and I/N Kote joint venture facilities.

The Union argues that while the combined operating levels of the No. 27 and No. 28 Temper Mills have exceeded 20 turns in recent times, this is a temporary phenomenon. In the Union's view, some of the increase in turns is not the result of increases in production or the tonnage rolled by the mills. To the contrary, it argues that the added turns were due to a reduction in productivity caused when the Company allowing the incentive performances of the No. 27 jobs to get badly out of line with those of the No. 28 jobs.

This out-of-linement, and a resulting reordering of the promotional sequence to reflect the relative earnings of jobs, has resulted in an "inversion" of the logical sequence of jobs. Experienced No. 27 Rollers are now working on the better paying No. 28 Assistant Roller and No. 28 Feeder positions, leaving only inexperienced employees to do the rolling on No. 27. The Union argues that a "correction" of the No. 27 incentive plan, and a rational realignment of jobs, would lead to a lowering of the current turn level. Since the Company has failed to take such corrective action, the Union urges that the Company should not be allowed to disregard the Mutual Agreement setting 20 turns as normal when the abnormal higher level is its fault. Alternatively, it suggests that in time, as the less experienced No. 27 Rollers improve, the combined turn level will drop at least below 25 turns.

To the extent the Union concedes that any part of the increase in turns is due to better markets and more sales of the products rolled (such as light gauge laminates), it argues that it is temporary since the Company intends to shift some of this production to relatively newer mills, such as the No. 29 Temper Mill, and also that the needs for No. 27's and No. 28's services as a final steel finishing operation are being replaced by the in-line tempering on the new galvanizing, electroplating, and coating lines in the greenfield I/N Tek and I/N Kote facilities.

While the parties are at odds as to the future, the facts about the recent history of Nos. 27 and 28 Temper Mill are uncontested. Until 1987, their combined operations rarely exceeded a total of 20 turns, and for the most part were short of that.<FN 2> However, both the Company's exhibits and those of the Union show that beginning in late 1987 the trend started upward, with the sampled weeks in evidence reflecting production consistently above 20 turns.

This trend continued, and since the end of 1989 production has been around the 30 turn level. Where there have been weeks in 1990 below 30 turns, it appears that it was not due to lack of orders to fill, but the lack of trained employees to man the unit for additional turns.

On the basis of both parties' exhibits and the testimony, I find there has been a change in the combined operating levels of the No. 27 and No. 28 Temper Mills, and that to a degree at least above 25 turns, that change is permanent for the foreseeable future.

The Union's out-of-line incentive argument must be rejected as a basis for the continuation of the Mutual Agreement. First, Section 6(d) does not call for fixing of either blame or credit for a change in circumstances causing an agreement to unnecessarily restrict transfer and promotional rights, but only for determining that such a change has occurred. Second, to the extent the inversion of jobs has caused inefficiencies necessitating increased turns of operation, the additional turns so accounted for would not

drop the current total below 25. Thus, even after the current No. 27 Rollers become experienced and fully proficient, the operating levels should remain above 25 turns.

As for an adverse impact on the No. 27 and No. 28 Temper Mills of the new I/N Tek and I/N Kote facilities, it is far from being sufficiently certain so as to require the continuation of the Mutual Agreement's clear and present restrictions on transfer and promotional opportunities of longer service employees, both within and outside the combined unit.

While I believe the Union's testimony that an I/N Tek official, in urging I/N Tek employees to redouble their efforts in bring the new facility on-line, stated that I/N Tek was currently overloading the No. 27 and 28 Temper Mills, I cannot agree to give that statement the same importance the Union gives it. The dynamics of modernization at the Indiana Harbor Works, with the phase out of the No. 1 and 2 Cold Strip Mills and the shifting of some of their products to the No. 27 and No. 28 Temper Mills, along with the positive impact that I/N Tek and I/N Kote may have, preclude giving much weight to an isolated statement delivered in the context it was delivered.

In this regard, I recognize that the Union is at a nearly insurmountable disadvantage in refuting Company assurances about the future. The Company controls the facts as to its intentions. When those intentions are stated by responsible Company officials under oath, they cannot be easily rejected on the basis of suspicions that the Company's real intentions are otherwise.

Finally, I must also reject the Union's argument that the Mutual Agreement is not restrictive, but protective of promotions, at least for the present incumbent employees. That argument seems viable only if the increased production levels are in fact temporary. To the extent the argument is based on the proposition that a senior employee has a hard time "catching" and passing a junior employee who entered the unit and advanced in it ahead of him, that is simply a recognition of the way the system works, with a one-job-at-a-time promotion requirement.

In summation, this case requires the careful weighing of all of the considerations which the parties agree, and the Collective Bargaining Agreement reflects, went into the 1977 conversion to a plant service based seniority system. That conversion promised greater transfer and promotional opportunities in line with plant service, tempered by the needs for operational stability and the protection of acquired job standings. In the present situation, the 1978 Mutual Agreement has thrown the scales out of balance and has become unnecessarily restrictive of the transfer and promotional opportunities provided for by Article 13.

AWARD

The 1978 Mutual Agreement is invalid and unenforceable.

/s/ Robert T. Moore 9/5/90

Robert T. Moore

Arbitrator

<FN 1>If a Section 6(d) agreement is rendered invalid and unenforceable, or should one of the parties withdraw from it without cause, as Section 6(d) provides can be done "at the commencement or during local negotiations" for a succeeding Basic Labor Agreement, the effect on the unit in question is for it's "normal" level of operation to revert to that dictated by Section 6(c). That is, a non-continuous operation, which under a Section 6(d) agreement had been established at a 5 turn level, would go to a 15 turn level. This would be so even though the reason for a change was a permanent increase in operations to only a consistent 10 turn level. Neither Sections 6(c) or 6(d) allows for an intermediate level in the absence of a new Section 6(d) agreement.

<FN 2>The "normal" operating level of neither No. 27 nor No. 28 has tended to be exactly 10 turns per week, or even a number evenly divisible by 5. Rather, in any one week one mill may work 13 turns and the other 7, with some of the employees within the sequence working some of their turns during the week on one mill and the rest of their turns on the other.