Award No. 855
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 19-T-85
Appeal No. 1466
Arbitrator: Terry A. Bethel
February 3, 1992
OPINION AND AWARD
Introduction
This case involves the union's assertion that the company violated the contract when it laid off certain craftsmen during the week of June 9, 1991. The case was tried under a stipulation that reads as follows:
This understanding sets forth the parties' stipulation of the issue to be resolved in this arbitration hearing. The parties' dispute involves the proper interpretation of Letter V of Appendix N in the 1986 collective bargaining agreement. The union contends that this letter prohibits the company from reducing below the minimum base force complement in those sequences in which it is established by Letter II of Appendix N of the 1986 collective bargaining agreement. The company contends that Letter V allows the company to reduce below all of the minimum force complements established in Appendix N including those sequences identified in Letter II. Specifically not at issue in this case is whether the company has or can establish that it has met the burden established in Letter V in order to reduce below the minimum base force complement. The union preserves its right to challenge that fact in the future if it should so choose.
The hearing was held in the company offices in East Chicago, Indiana on January 23, 1992. Brad Smith represented the company and Jim Robinson presented the union's case. Both sides filed prehearing briefs.
Appearances
For the company:
B. Smith -- Senior Representative, Union Relations
R. Vela -- Section Manager, Union Relations
L. Pisani -- General Manager, IRMC
For the Union:
J. Robinson -- Chrm., Grievance Committee
M. Mezo -- President, Local 1010
L. Aguilar -- 2nd Vice Chrm., Grievance Committee
B. Carey -- Griever
P. King -- Chair, Contracting Out
J. Kumeigh -- Wireman
P. Paul -- Wireman
J. Schultz -- Fabricator, Ass't Griever
D. Pariso -- Machinist
H. Graham -- Machinist, Griever Steward
P. Rodriquez -- Utilityman, Griever Steward
Background
This case involves the union's contention that the company violated the agreement when it laid off a group of IRMC field services machinists during the week of June 9, 1991. There is no factual dispute. Rather, resolution of the union's claim depends almost entirely on interpretation of a portion of Appendix N to the collective bargaining agreement. Specifically, the parties dispute the meaning of a letter agreement identified as Letter IV in the 1989 contract and as Letter V in the 1986 agreement. For purposes of clarity, I will refer to the language as Letter V, as the parties have done in their stipulation.
As noted, Letter V is part of Appendix N, a section of the contract headed Assigned Maintenance Agreement, which first appeared in the 1986 agreement. I have previously had occasion to interpret portions of Appendix N in Inland Award 846. Rene Vela, section manager of union relations, testified about the purpose of Appendix N in both the instant case and in the hearing leading to my opinion and award in Award 846. Vela noted that prior to 1986 some operating departments were overstaffed with certain maintenance employees in order to have sufficient staff available to provide necessary maintenance

services on scheduled down turns. The result was that these operating departments were usually overstaffed when the department was in production, and sometimes understaffed during scheduled maintenance turns. The response of the parties to this perceived inefficiency was to create the Mobile Maintenance Department, now known as Mobile Maintenance Services or MMS. It was the creation of this department to which Appendix N is addressed. The first sentence of the Assigned Maintenance Agreement discloses the purposes of the parties in negotiating Appendix N: "The parties recognize the need to substantially improve the efficiency and productivity at the Indiana Harbor Works while assuring employment security for assigned maintenance employees." Thus, the provisions of the agreement are to serve dual purposes. Appendix N allows the creation of a mobile maintenance force that can be assigned by the company where and as needed (with some limitations not relevant here). At the same time, the agreement protects the employment security of the craftsmen who were affected by the creation of the new, mobile force.

I need not review here all of the provisions of Appendix N. Briefly, the parties agreed to the creation of a document known as Attachment A, which was a listing of some 2700 craftsmen in the company's assigned maintenance forces. The parties agree that as typically and historically used, the terminology "assigned maintenance" refers to craftsmen who are assigned as such to various operating departments in the Harbor Works. Thus, during his testimony, Vela said that as used in Appendix N, the term "refers to operating departments that have assigned craftsmen, [like] mechanics, motor inspectors, electricians, and welders. Departments that have assigned maintenance sequences to them."

These assigned maintenance employees were the primary subjects of protection in Appendix N. The craftsmen listed on Attachment A, for example, could not be laid off as the result of the creation of the MMS. Instead, layoffs could occur only through the occurrence of three events: department shutdown, technological change, or decreased operations in a department. Moreover, any attachment A craftsman displaced from his department as a result of one of those events could bump into the MMS under the provisions of AN 2.2. Finally, AN 5 created a minimum base force complement in all assigned mechanical, electrical and welding sequences equal to 67% of the number of employees shown on attachment A. On its face, then (and without regard to letters of agreement) the effect of AN 2.2 and AN 5 would seem to be that assigned maintenance employees included on Attachment A could not be laid off except for certain enumerated reasons and that those craftsmen included in the minimum base force could not be laid off at all.

Vela testified that the parties did not fully comprehend all of the problems that might ensue as they negotiated appendix N. Thus, on occasion one party or the other would propose a modification or clarification to the draft agreement in the form of a letter. One such letter was Letter II, which dealt not with assigned maintenance employees, as that term is used in Appendix N, but rather with craftsmen who were not assigned as a sequence in an operating department. The letter reads as follows:

This confirms our understanding reached during the 1986 Negotiations that the Company will establish and maintain a minimum base force complement in the shop services department, weld shop welding sequence and the machinist and welding sequences in the field services department. Each of these base force complements will equate to sixty-seven percent (67%) ... of the employees permanently established in such sequences, as of the effective date of the 1986 agreement.

As explained by Vela, the employees identified in Letter II were not protected by Appendix N because they were not assigned maintenance employees. They were, as Vela described them, a "discretionary force," and could be reduced as management as necessary. <FN 1> After the creation of Letter II, only 33% of the unassigned maintenance employees in the named departments were discretionary. The remaining 67% were part of a minimum base complement and, as with the assigned maintenance craftsmen protected under AN 5, apparently could not be laid off.

The realization that Appendix N had created base force complements with what Vela described as "absolute protection" against layoff did not come to the parties -- or, at least, to the company -- until after Appendix N had taken its basic form. In order to remedy that situation, the parties agreed to Letter V. That letter reads as follows:

This letter confirms our understanding reached during the 1986 negotiations regarding the base force provision(s) of F-6 and F-6-a. The parties agreed that a department's assigned maintenance sequences may be reduced below the established base force complement(s) level during periods of reduced operations in such departments, or for reason of a department or technological change.

The provisions identified as F-6 and F-6-a are, respectively, appendix N and Letter II.

There is no dispute about the effect of Letter V on the assigned maintenance craftsmen covered by Appendix N. Although AN 5 would appear to create a minimum base force that was immune from layoff

(or, as Vela described it, absolutely protected from layoff) Letter V makes it clear that, under some circumstances, members of the minimum base force can be laid off. The issue in this case is whether this vulnerability to layoff extends not only to the assigned maintenance craftsmen who are the subject of Appendix N, but whether it also extends to the unassigned craftsmen identified in Letter II. In short, the issue is whether the minimum base force employees created by Letter II can be laid off under the circumstances outlined in Letter V.

The union urges that they cannot and, therefore, asserts that when the company laid off such employees in June, 1991, it violated the guarantees made to them in Letter II. As authority, the company points to the language of Letter V, which says that "a department's assigned maintenance sequences" may be laid off under certain circumstances. (emphasis added) The craftsmen described in Letter II, however, are not assigned maintenance craftsmen, as that terminology has been used historically and, indeed, as it is used in Appendix N itself. Letter V, the union claims, affects the employment security only of assigned maintenance employees. It does not extend to the unassigned maintenance employees identified in Letter II.

The company resists the unions position with a variety of arguments. First, and most important, the company asserts that letter V includes within its sphere not only assigned maintenance employees, but also the unassigned craftsman who are the subject of Letter II. As support, the company notes that the first sentence of Letter V refers to both F-6 and F-6-a, which is to say, the subject of the letter is a modification to the protections granted craftsmen under both AN 5 and Letter II. It would make no sense, the company urges, to identify both Appendix N and Letter II in the language of Letter V if the only intent of letter V was to restrict the rights of craftsmen affected by Appendix N. In that regard, Vela asserted that the terminology "a department's assigned maintenance sequences" used in Letter V does not identify only the assigned maintenance employees covered by Appendix N. Rather, he claimed that the language was also intended to encompass such departments as the field services department, and the craftsmen assigned to them. Obviously, this would be using the term "assigned maintenance" in a different manner from its utilization in the remainder of Appendix N.

The company also contends that the union's interpretation is inconsistent with the obvious intention of the drafters of Appendix N. That intention was to restrict what Vela called the absolute protection available to base force craftsmen without the provisions of Letter V. Under the union's interpretation, the unassigned maintenance forces would continue to enjoy this protection, but the assigned maintenance craftsmen would not. The company urges that there is no warrant for concluding that the drafters intended such an anomaly.

Finally, the company asserts that its interpretation is consistent with the principles of contract interpretation. It claims that the union's interpretation renders AN 15 superfluous, obviously invoking the principle that one provision of an agreement cannot nullify another provision, in the absence of a clear intent of the parties to do so. The company also claims that the union's interpretation would undo the obvious intention of the parties, and it reminds me that contracts must be interpreted to respect the parties' intent. The company argues that the union's reading follows only by isolating one provision of the contract -- the second sentence of Letter V -- from the remainder of the agreement and reading it without reference to the parties' overall goals. Finally, the company urges that the union's interpretation would produce a result that, according to Vela, is "crazy." Unassigned maintenance employees in the base complement would receive what amounts to absolute protection from layoff, a benefit granted no other employee of Inland Steel.

Discussion

It is worth remembering what an arbitrator cannot do. My only authority is to construe the language agreed to by the parties. I am unable to make agreements for them and I cannot undo commitments that have turned sour, ones that produce unintended consequences, or even ones that were the product of oversight. It may be true, as the company urges, that arbitrators -- like other contract interpreters -- have the power to reform an obvious mistake, and it no doubt is the case that arbitrators can construe ambiguous language to avoid nonsense. In my view, however, none of the arguments advanced by the company apply to this case.

1. The Language of Letter V

Despite the earnest efforts of Mr. Smith, I am unable to find any ambiguity in Letter V. Indeed, I think just the contrary is true. Letter V says unambiguously that "a department's assigned maintenance forces may be reduced" below the base force minimum in certain circumstances. The words "assigned maintenance forces" are not new words for these parties. They were using them for years before the advent of Letter V and they meant something that everyone understood. Why, then, would experienced, intelligent negotiators like these deliberately use words with a known meaning to mean something else? I think the answer to that is clear. They wouldn't and they didn't.

Moreover, if they were going to do something that unusual, surely they wouldn't misuse the language in the context of an agreement about assigned maintenance forces. That, however, is what the company argues. It asserts that the parties placed a letter in Appendix N, which is headed "Assigned Maintenance Forces," a term that everyone understood, and that in the course of that letter they used the words "assigned maintenance forces" to mean something different from what they meant in the title to the appendix and what they meant throughout the remainder of the appendix. If I am to attribute consistency and rationality to the parties, as the company urges, then I must find that they used the words "assigned maintenance forces" in Letter V to mean the same thing they mean in the rest of Appendix N.

This conclusion is not undermined by the fact that the parties made reference to both assigned and unassigned maintenance. employees in the first sentence of Letter V. The first sentence merely states that the parties reached certain understandings with respect to the base force provisions of Appendix N and Letter II. It does not say what those understandings were. The second sentence then says that craftsmen in the assigned maintenance sequences could be laid off under certain circumstances, despite the assurances offered in AN 5. It does not necessarily follow that the same treatment was to be afforded unassigned maintenance forces. Rather, the opposite inference is not only possible but, given the specific language used in the second sentence, even more reasonable.

As noted, after identifying the base force provisions of Appendix N and Letter II, the second sentence of letter V goes on to say that assigned maintenance can be laid off anyway, under limited circumstances. Since Letter II employees were identified in the first sentence, but excluded from the second, the obvious inference is that they were not to share in the same treatment. Perhaps the company's position would have more force if the language used by the parties was actually ambiguous, but it is not. The second sentence applies to a limited and well defined class of employees, and there is no warrant for expanding that language.

2. The Intent of the Parties

Much of the company's argument is that the union's interpretation is inconsistent with the obvious intentions of the parties in negotiating Appendix N. Simply stated, if the parties' goal was to increase the efficient utilization of maintenance forces, it makes no sense to carve out one group that has near absolute protection against layoff.

I cannot say what the parties intended by their agreement. I wasn't part of the negotiation and, equally important, the agreement restricts the ability of either party to offer evidence of discussions during negotiation as a way of interpreting what the parties did. Moreover, it is not necessarily the case that the parties actually shared the same intent, or at least that they were motivated by exactly the same considerations. The preamble to Appendix N, for example, mentions efficiency, but it also mentions job security. It is no doubt true that the union had more interest in the latter, while the company acted to foster the former. That divergence of intent or motive has no effect on the agreement, for it is the language that controls. I cannot know exactly what the parties thought during their negotiations, but I do know what they said. And it is the interpretation of those words that define my responsibility in this case.

Nevertheless, the company asserts that I cannot interpret the words to mean nonsense. That is, I cannot impose on them an interpretation that is so foreign to their obvious intention that I effectively nullify their agreement. Simply stated, I cannot construe the contract to achieve a result that is, as Vela put it, crazy. There may be some question about the latitude available to arbitrators in the interpretation of unambiguous language. However, even if I accept the company's view of my authority and responsibility, it does not affect my interpretation of Letter V.

The company asserts that it makes no sense to immunize a group of employees against layoff, especially when Letter V makes it clear that similarly situated employees can be laid off, under certain circumstances. To answer this contention, I need not divine exactly what the parties intended. Rather, since the company's argument is that the union's interpretation is irrational, I need only determine whether it is possible to offer a rational basis for that interpretation.

As I noted above, assigned maintenance employees and unassigned maintenance employees do not have equal rights under Appendix N. The portion of Attachment A employees not protected by the base force complement can be laid off, but only under limited circumstances. And if they are laid off, they have the opportunity to bump into the MMS, no matter what the reason for the layoff. By contrast, the portion of the Letter II unassigned maintenance employees unprotected by the base force complement can be laid off without regard to the restrictions that apply to their counterparts in assigned maintenance. They are, as Vela put it, discretionary. Moreover, any such employees who are laid off have more limited bumping rights into the MMS than do their counterparts in assigned maintenance.

In short, the parties clearly decided through their negotiation of Appendix N and Letter II that they would not treat equally, assigned maintenance employees and unassigned maintenance employees. I cannot assume, then that they intended such equal treatment in Letter V. Indeed, in his final argument, Mr. Robinson offered a plausible explanation for the disparity evident in the clear language of Letter V. He surmised that the parties offered some significant protection against layoff to assigned maintenance employees not part of the base force complement, but offered very little to similarly situated unassigned maintenance employees. The payoff, he suggested, was to offer greater protection to the unassigned maintenance employees who are part of the minimum base force.

As I note above, I cannot say that this was the parties' intent. That isn't the point. Rather, the union's explanation offers a rational explanation of how the parties came up with the language that now appears in the agreement. Having done so responds adequately to the company's contention that the letter, as read by the union, is crazy. This is not to say that the union's interpretation of intent is correct, or that is reasonable, or even that it is fair. I have no opinion about what the parties should have agreed to. But I am unable to find that the union's interpretation of Letter V is irrational or that it somehow is inconsistent with an appendix that was intended, at least in part, to foster job security.

3. Other Company Arguments

The company supports its position by pointing to AN 20, which reads as follows:

Except as provided in this agreement, nothing in this agreement shall be construed as a guarantee to any individual employee of any number of hours of work per day or per week or compel scheduling which results in overtime payment.

The company urges that the union's interpretation violates this provision since it would prohibit the company from laying off certain employees, thus guaranteeing them work. I have no opinion about whether a prohibition from layoff guarantees employees a certain quantity of work, since that is not an issue entrusted to me. I find, however, that AN 20 imposes no limitation in this case. AN 20 is not a blanket ban against guaranteed work. Indeed, it recognizes that some provisions of the contract may do exactly that. Thus, it says that there shall be no such guarantee "except as provided in this agreement." If Letter V has the effect of guaranteeing work, then, it would be a specific provision of the agreement and therefore within the exception language of AN 20.

The company also argues that my adoption of the union's interpretation would have the effect of freezing the employment rights of the affected unassigned maintenance employees forever. That clearly overstates the effect of this opinion. My only holding is that the contract currently prohibits the layoff of the base complement unassigned maintenance employees described in letter II under the criteria outlined in Letter V. But this is merely a contractual benefit; it is not a birthright. Contractual commitments can be changed, should the parties elect to do so.

The company also argues that the union's interpretation would make AN 15 superfluous. That section allows displaced unassigned craftsmen to bump into the MMS, if their displacement is attributable to the MMS. The union's interpretation, however, does not make this provision useless. The only craftsmen protected against layoff by Letter V are those in the base complement. The other 33% of the group has no such protection and can therefore claim rights under AN 15, if applicable.

Finally, the Company argues that the union has conceded the appropriateness of the company interpretation because it has failed to object to a previous layoff involving similar facts. In particular, the company notes that employees of the IRMC base force machinists sequence were laid off for a period of four weeks in 1989 with no complaint (or at least no grievance) from the union. As I noted in Inland Award 853, a union is not necessarily required to grieve every alleged contract violation in order to preserve its rights under the collective bargaining agreement. I am not prepared to say that inaction on the part of the union could never prejudice its ability to grieve. I am unable to reach that conclusion, however, from the one occurrence in evidence here.

Conclusion

This was not an easy case for the company. Although the union had the burden of proof, it was nonetheless left to Mr. Smith to explain away language that unambiguously defeated the company's claim of right. I think he raised every conceivable argument. The difficulty was not the company's theory. Rather, it was the language the parties chose to use in Letter V. In my view, that language means that the company has no right to reduce the base complement forces created by Letter II. Accordingly, I will sustain the grievance and order a make whole remedy.

AWARD

The grievance is sustained. The company will provide a make whole remedy.

/s/ Terry A. Bethel
Terry A. Bethel
February 3, 1992
<FN 1> Vela also testified that such employees were not entirely discretionary since, under AN 15, they could bump into the MMS if they were displaced from their sequences as a result of the MMS.