Award No. 865
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
December 14, 1992
OPINION AND AWARD
Introduction
This disputes anticipates the company's desire to make certain changes in the way scrap is loaded onto cars and transported from the scrap yard into the BOF. It implicates Article 2 and Article 13 of the agreement. The case was tried on October 15 in the company's offices in East Chicago, Indiana. Jim Robinson represented the union and Pat Parker presented the company's case. The parties filed pre-hearing briefs and submitted the case on final arguments.
Appearances
For the company:
P. Parker -- Project Mgr., Union Rel.
J. Bradley -- Section Mgr., No. 4 BOF
P. Pogorzelski -- Business Analyst, No. 4 BOF
B. Smith -- Senior Rep., Union Relations
For the union:
J. Robinson -- Chairman, Grievance Comm.
A. Jacque -- 1st Vice Chr., Gr. Comm.
J. O'Donahue -- Griever
D. Harvey -- Ass't Griever
D. Banks
H. Gibbs
D. Moore
R. Pierce
M. Strong
Background
Although the facts are not complicated, this is a case of considerable complexity. Part of the steelmaking process involves the use of certain quantities of scrap in each heat, depending on what is being produced. The company generates most of the scrap internally, but purchases about 30% from outside vendors. The scrap which is used in the production process is delivered to an area known as the scrap yard and kept there in open railroad cars. An employee known as the scrap craneman<FN 1> uses an overhead crane to load the scrap (sorted at least by weight) into a scrap box, which runs between the scrap yard and the BOF on railroad tracks.
After the scrap box is loaded, a scrapman transports it into the BOF where it is charged into the furnace. The box is transported over the track by use of a front end loader, operated by the scrapman. Given the nature of the work, the scrap craneman and scrapman are often not engaged at the same time. That is, the scrapman will wait for the scrap craneman to fill the box, and the scrap craneman will wait for the scrapman to return it. The evidence established that in the ordinary turn, the two employees will load and transport eleven to thirteen scrap boxes.
Company exhibit 10 reports the results of a time study which measured the level of activity of the scrap craneman and scrapman on two different days. On the first day, the craneman was occupied about 50% of the time and the scrapman was engaged about 35% of the time. On the second day, the per centages were about 40% for the craneman and about 24% for the scrapman. Jim Bradley, section manager at no. 4 BOF, testified that these observations were consistent with the duties ordinarily performed by the individuals in these jobs.
Although there was no direct testimony about how much their work has decreased, it appears to be true that the work loads of both employees have diminished in recent years, due at least in part to the company's decision to discontinue making ingots. Partly in response to this reduced workload, the company plans to convert the scrap crane to remote control and have it operated by the scrapman. The scrap craneman, under the company's plan, would be eliminated. The two employees are in different seniority units.

The union protests that this course of action will result in the transfer of the craneman's duties across seniority unit lines, which is says is prohibited by Article 13, Section 3, and Article 2, Section 2. In support of this position, it cites several arbitration awards construing and applying those provisions. The company, on the other hand, urges that with remote controlling, the work of the scrap craneman will be eliminated and it is therefore appropriate for it to assign the duty of remote control operation to a different employee.

Positions of the Parties

Both sides cite other arbitration awards, some of which involve cranes and none of which, despite the earnest protestations of each side, is directly on point. Much hinges here on the telescope through which one views the facts since, depending on the characterization of what happened, both sides can make credible claims. That does not make things easy for the decision maker. Moreover, because this is a prospective case seeking what one arbitrator has characterized as a form of a declaratory judgment, there is one unknown which, again depending on the characterization, may be of significance.

The company cites numerous cases dealing with the effects of remote controlling a crane.<FN 2> Its analysis begins with Burt Luskin's opinion in Republic Steel Decision No. BL-355, decided in 1971. In that case, the company had installed radio controls that allowed mechanics needing crane service to operate it themselves, instead of relying on a craneman. Luskin noted that the company had assigned a craneman every time a crane needed to operate for an entire turn and went on to say:

The modifications to the crane . . . were major modifications so significant in nature as to change the basis for any practice which may have existed with respect to the assignment of employees to the operation of the crane. When the modifications to the crane were completed, it was no longer a cab-controlled crane, and it became a floor-operated crane, which resulted in a major, significant method of change in the operation of the crane.

This case was cited subsequently by arbitrator Alexander Porter, in Republic Steel Decision No. 54, a case in which the company changed the blooming mill crane from cab control (by a craneman) to radio control, used by various employees who needed crane service. The arbitrator noted, as the union does in this case, that "there has been no real change in the operations which are serviced by the crane." Nevertheless, he rejected the union's local working conditions claim, citing BL-355 as precedent for the proposition that "the conversion from cab-controlled to radio . . . controlled crane operations constitutes a change in basis which plainly justifies changing the practice of assigning such work to crane operators."

Article 2, Section 2, however, is not the principal issue the union raises. At base, its claim is that the company violated Article 13, Section 3, as it is affected by Article 2, Section 2, when it moved the work of operating the crane from one seniority sequence to another. The company also cites crane cases dealing with this issue. Most prominent is Peter Seitz' opinion in Phoenix Steel Corp. Case no. AC-68-02, introduced as Company Exhibit 11. There the company eliminated the craneman when it remote controlled a crane, assigning the task of moving it to the hooker (in a different seniority sequence) on an as needed basis. In commenting on the conversion of the crane, Arbitrator Seitz said: "In the new job there is simply no residual function for a crane operator, controlling a crane by the manipulation of manual controls to perform."

The company urges that this case is directly in point. Arbitrator Seitz, the company says, recognized that the fact of changing from cab control to remote control was significant enough to allow the elimination of the craneman. The craneman's duties had simply disappeared. The new duties of remote control operation could then be assigned elsewhere.

That, essentially, is the company's argument in the instant case. It claims that its decision to install radio controls means that the scrap craneman's work has been completely eliminated. The new duties of moving the crane by remote control, it says, can be assigned as it sees fit, though it makes sense to give them to the scrapman since he is already working in the same area.<FN 3> Although the union contests the company's right to assign the craneman operation outside the sequence it does not, in this arbitration, raise an issue about where the remote control duties should be assigned if the craneman's position has been eliminated.

The union urges that each of the cases cited by the company is distinguishable from the facts at issue in the instant case. Company Exhibit 11, for example, involved a hooker who had used crane service as a tool to help him perform his job on the ground. The remote control allowed the hooker to complete his work without the assistance of a craneman. Similarly, in company Republic Steel BL-355 and American Bridge, the employees to whom remote control operation was assigned were those who used the crane as a tool in the completion of certain tasks.

That, however, contrasts with the instant case, in which the scrap craneman and the scrapman perform discreet functions in the movement of scrap from the scrap yard to the furnace. The union acknowledges

that the functions performed by these two employees are related, but says they are not integrated in the same sense that the hooker's and craneman's work were in Phoenix Steel. The two do not work concurrently to accomplish one task. Rather, each performs a separate function and neither receives any help from the other in the work assigned to him.

The union sees the cases cited by the company as instances in which a technological change made it possible for an employee to do himself work that he had formerly had to do in concert with another. In the instant case, however, the union urges that the company has simply figured out a way to lump two separate jobs (in two different seniority sequences) into one. And it points to an area of factual uncertainty as support for its claim that the scrapman will perform two different functions.

As noted earlier, the scrap is delivered to the scrap yard in open railroad cars. The craneman removes the scrap from the cars with a magnet and loads it into the scrap buggy. Obviously, the craneman has to be able to see down into the cars in order to accomplish this task. The scrapman, on the other hand, works on the ground, moving the scrap buggy to and from the BOF. There is no dispute that he cannot see into the railroad cars from the ground or that, in order to operate the crane, he will have to be located at some elevated place.

At the present time, the company is not certain how it will handle this problem. And it may be a period of months before it finds the best solution. It may build a platform of some type on the front end loader, which the scrapman could mount to operate the crane; it may provide a platform or elevated walkway somewhere else; it might install cameras, which would presumably allow the scrapman to see into the railroad cars from the ground.

The union apparently had not heard about the possibility of cameras prior to the hearing, but it hypothesized that in order to operate the crane, the scrapman will either have to locate himself in or near the cab, or else at a fixed location away from the area where he ordinarily works. In either event, the union argues that the position of craneman has not really been eliminated; the company has simply moved the cab and put someone else in it.

The union urges that the facts in this case are more akin to the situation in Inland Award No. 813 than any of the cases cited by the company. In that case the company wanted to create a job that included duties performed by employees of another seniority sequence. In effect, the company wanted to take a bundle of duties from various jobs and give them to one employee. Arbitrator McDermott noted that the union's real claim was grounded in Article 13, Section 3, as aided by Article 2, Section 2 which he said combined to mean that "if a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity, then the concepts of paragraph 13.11 and local working condition principles . . . require that such work not be transferred across seniority sequence lines." McDermott concluded that, having successfully competed for the work once, the seniority sequences in question did not have to compete for it again when the company created more of the same kind of work.

Although the company is not creating additional work in the instant case, as it did in Inland Award 813, the union urges that the principle of that case controls this one. By past practice, the parties have already decided that the craneman in the No. 4 BOF crane sequence is the proper repository of the duties of operating the scrap crane. Those same duties are still necessary. The same scrap box will still be loaded by the same crane, making all the same moves it made before. That work has not been combined with another job, the union says, as happened in the cases cited by the company. Rather, two discreet functions remain. The only thing that has changed is the location of the cab. The scrapman will now have two locations -- he will move the scrap box on the floor and he will operate the crane from wherever the company puts the controls.

Discussion

The union is correct in its assertion that there is a difference in most of the cases cited by the company and the facts at issue here. In most of the company's cases, the crane at issue was used for maintenance purposes, or otherwise employed to assist someone in the performance of another task. Thus, a hooker would use the crane to move materials or a maintenance man would use it to transport something or to change rolls or otherwise service equipment. In this case, however, the crane is used as a normal part of the production process. The scrap craneman is one link in the chain of tasks that turns scrap back into salable steel.

While this factual difference exists, differences themselves are not determinative. It is one thing to distinguish a case on the facts. It is another to prove that those distinctions compel a different result. It is not clear to me that this is the case here.

Although the scrap craneman is involved in production, his role is not unique. Other cranemen, too, perform production functions and not all of those merely assist others on the ground. The scrap craneman, then, is involved in a routine activity, not unlike those performed by other cranemen. The same can be said for the cranemen who were at issue in the cases cited by the company. Because both kinds of work fall into the universe of that ordinarily performed by cranemen, stating the differences between them does not mandate disparate treatment when the crane is remote controlled. What is it, then, that allows the company to eliminate the craneman when he assists others but would prohibit that result in the instant case?

The union asserted a number of factors in its argument. The scrap crane, it said, is still in place and will still perform the same function it has always performed. It will continue to load the scrap box, making the same moves it made before. The same thing is true, however, in most of the cases cited by the company. The remote control operation differed from the previous method of operation but the crane was still expected to do the same work. Arbitrator Porter made that exact point in Republic Steel Decision No. 54: "The evidence indicates that there has been no real change in the operations which are serviced by the crane. Now as before, it is used to remove scale, debris, scrap, cobbles, housings and rolls from the mill area, as well as to load or unload rolls," etc.

In addition, the union urges that the crane conversion in cases like Phoenix Steel and American Bridge had the effect of combining two related jobs into one. It says, however, that there is no such combination in the instant case, but merely the assignment of two distinct jobs to one employee. This is not an easy distinction to pin down. It is true that in cases like Phoenix Steel and American Bridge, two employees who worked concurrently were replaced with one who could, in effect, do both jobs at the same time and from the same location. In the instant case, however, both jobs will not be performed at once. The scrap box still has to be loaded before it can be moved, and (assuming there is only one) it still has to be returned before it can be loaded again.

But the cases are not as easy to distinguish as the union would have me believe. Though the hooker in Phoenix Steel may have been responsible for hooking material and directing crane movements, he did not actually move the crane. Indeed, his hooking duties could not have been performed while the crane was in motion. Similarly, in American Bridge the employees who were responsible for moving material around the forge shop did not, prior to the conversion, operate the crane themselves. Presumably, they could not work on the materials until after the craneman had completed his lift. The only real difference between these cases and the instant case is that in Phoenix Steel, the hooker also directed the crane movements from his place on the floor.<FN 4> The scrapman furnishes no such direction in the instant case. Although I agree that this difference exists, that fact does not compel a different result, as I will explain below.

As further evidence of the discreet nature of the jobs, the union points to the difficulty the scrapman will have in operating the crane from his ordinary work station on the ground. As explained above, the union argues that the company will do nothing more than move the cab, which will require the scrapman to leave his place on the floor (or on the front end loader he operates) and go to another work station in order to operate the crane. Even the American Bridge case, one of the company's principal exhibits, notes that the remote control made it possible for a press operator "to operate the crane without leaving his work place." One of the difficulties with this argument is the uncertainty about how the scrapman will operate the crane. He may be on an elevated platform, he may be on a platform added to the front end loader, or he might even stay on the ground and operate the crane with the assistance of cameras. The company could say only that he will not operate the crane from the cab. Moreover, Jim Bradley testified that he would not be on the catwalk that runs alongside the crane's area of operation.

I understand the need to decide this case with an imperfect knowledge of the facts. In that regard, it is important to remember that the union's argument about the crane cab being moved really goes to its contention that these jobs will not be combined into one, which is what it says happened in Phoenix Steel and American Bridge. Rather, two distinct jobs will remain, both assigned to one employee. The vice of this arrangement, the union says, is that the work of the craneman will be assigned across seniority unit lines.

As I observed at the outset, this is not an unreasonable characterization of the record. Inland Award 813 says unambiguously that work cannot be transferred from one seniority sequence to another merely for reasons of convenience or, presumably, efficiency. I have said before that efficiency is only one of the values served in collective bargaining agreements. The question here, however, is whether work is really transferred or whether work has been eliminated. To that extent, the decisions of other arbitrators are a matter of importance since prior arbitration awards have some precedential effect in this industry.

The union's argument would probably be persuasive if the scrapman were assigned to go to the crane cab, load the box, and then go down to the ground and move the box to the furnace. Of course, the union argues that that is essentially what has happened. I cannot view this, however, as a case in which the cab was simply moved from one place to another. It is true, of course, that the controls will be taken out of the cab and that it will be operated from another location. But it will not be operated in the same manner and I cannot ignore what other arbitrators have had to say about the effect of remote control.

In Republic Steel Decision No. BL-355, Arbitrator Luskin said "When the modifications to the crane were completed, it was no longer a cab-controlled crane and it became a floor-controlled crane, which resulted in a major, significant change in the operation of the crane." Similarly, in Phoenix Steel, Arbitrator Seitz said "It requires no elaborate exposition to demonstrate that the job of moving an overhead crane by remote radio controls is vastly different than jobs as they previously existed. . . . The material handler has acquired the duty of moving the crane by technological means entirely different from those which engage the skills of the crane operator." And, in American Bridge, Arbitrator Crawford observed "the union is not persuasive when it argues that the pendant crane is not a significant technological development. The pendant control makes it possible for the Hydraulic Press Operator to operate the crane without leaving his work place." Quite obviously, the union focuses on this last statement by Crawford, and argues that, in the instant case, the scrapman will have to leave his work place. In my view, however, a stationary location was not the principal factor in Crawford's decision. There, as here, the union had argued that the pendant control was "nothing new" and was merely a device that allowed the elimination of an employee. What mattered to the arbitrator was not merely the location of the employee to whom remote operation was assigned. Rather, as did both Seitz and Luskin, he focused on the effect of the technological development: "It was therefore no longer necessary to employ a craneman at a distant point . . . [W]ith the installation of a pendant crane . . . where formerly two jobs were required, now only one is necessary."

The same observation is apt in the instant case. The scrap craneman and the scrapman, though working separately, are the only two employees involved in moving scrap from the scrap yard to the calderon charger. It would not be enough to argue that one's work depends on the other, since that is true of everyone in the mill. Everyone is there to make steel and every job, more or less, depends on every other job. Some, however, are more interrelated than others. Though the scrapman and the scrap craneman do not work at the same time, they use some of the same equipment and the work each does is at the core of the other's. As with the craneman and the hooker in Phoenix Steel, neither could do his work without the other. Through technological advancement, the company has been able to combine these functions so that the same employee who moves the scrap box can first fill it. This does not mean that the company can eliminate any job just because the work can be done by someone else with time on his hands. But that does not accurately describe what happened here. These two employees perform interrelated tasks that comprise one discreet process, much as did the hooker and craneman in Phoenix Steel.

I understand the union's concern, not only because this job is lost but because the work force may also shrink in other ways. This opinion does not say that management is free to implement any change simply for the sake of efficiency. But in this case a significant technological change made it possible to combine two related functions into one and, as other arbitrators have recognized, the company is not required to continue scheduling an employee whose work has been eliminated and who is no longer needed.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

December 14, 1992

<FN 1>As explained at the hearing, the employee is paid on the scrap accounting position.

<FN 2>As I understand the evidence, this can be done in at least two ways: by radio controls and by pendant controls, in which lines run from the crane to a small control box located at ground level. For purposes of the cases under discussion here, nothing seems to turn on which of these two methods is employed.

<FN 3>The company also cites several other cases in support of its theory. In American Bridge Division, case no. AB-1, arbitrator Donald Crawford considered an argument quite similar to the one the union makes here. The company installed pendant controls on a crane that had formerly been operated from the cab by a craneman and assigned the remote operation as needed to various employees in a different seniority unit. The union asserted that the installation of pendant controls was not the type of technological change that would permit the company's action and that there was really nothing new in the operation of the

crane. The arbitrator said this argument was not persuasive. "The pendant control makes it possible for the hydraulic press operator to operate the crane without leaving his work place. Accordingly the union's grievance is in effect a request for the creation of a job which is no longer needed, an obligation which . . . [the contract] does not impose on the company.

The company also cites Armco Steel Corporation Grievance No. A-68-113, a case that does not support its position. The arbitrator's opinion makes it clear that the change which justified the company's action was not the remote controlling of the crane but the elimination of the operations the crane had supported.

<FN 4>This may also have been true in American Bridge, though that is not clear from the opinion.