Award No. 869
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
USWA LOCAL UNION 1010
Arbitrator: Terry A. Bethel
March 12, 1993
OPINION AND AWARD
Introduction
This is one of several so-called jurisdictional disputes the parties have tried in recent months. The case was heard in the company's offices on January 21, 1993. Brad Smith represented the company and Jim Robinson presented the company's case. Both sides filed pre-hearing briefs and submitted the case after extensive closing arguments.
Appearances
For the company:
B. Smith -- Arbitration Coordinator
L. Leonard -- Section Mgr., Chem., Quality Dept.
E. Knorr -- Section Mgr., Raw Mat. & Prod. Quality
J. Ebert -- Lab Super., Raw Mat. & Prod. Quality
J. Mulkey -- H.R. Generalist, Quality Dept.
S. Nelson -- Proj. Rep., Union Relations
For the union:
J. Robinson -- Chrm, Grievance Committee
A. Moseley -- Griever
B. Hasak -- Ass't Griever
R. Kronsell -- CCI Seq. Employee
J. Moryas -- Analytical Seq. Employee
Background
There is no dispute about the facts, all of which were testified to credibly by two company witnesses. The affected sequences are the analytical control sequence and the sampling sequence in the Chemical Department. The parties acknowledge that, historically, these sequences performed the work of testing iron and slag samples from the company's blast furnaces. Samples of liquid metal were taken as the furnace was cast, put into a pneumatic tube and sent to the quality control center. There, the samples would be crushed and otherwise prepared for examination by an analyst, who performed that work on an x-ray spectrometer. The results were communicated to the blast furnace personnel, who used the data to adjust input ratios of raw materials.
The quality control center performed this work for a total of eight blast furnaces: A and B furnaces in plant 3 and furnaces 1 through 6 in plant 2. Ordinarily, seven of the furnaces would be in operation at once, with one down for reline. The preparation work was performed by the sampling sequence and the analysis was performed by the analytical control sequence.
This historical pattern was disrupted in 1980, when no. 7 blast furnace came on line. The output from this furnace was as great as that of all the other furnaces combined. Although the same type of quality control work was necessary for no. 7 as for the other blast furnaces, the work was not done by sequences in the quality control center. Rather, the company built a testing lab near or at no. 7 blast furnace and had the testing done there by employees in the coal, coke and iron sequence (CCI). According to company witness Laurence Leonard, the work done at the no. 7 blast furnace lab was identical to that being done at the quality control center.
Both Leonard and Eric Knorr testified that the company constructed the lab at no. 7 blast furnace because of the volume of tests to be performed there. The other furnaces generally cast once a day, meaning that samples were taken only at that time. By contrast, no. 7 casts continuously and management was worried that the quality control center -- which was located some distance away -- would not be able to turn the test results around fast enough. In addition, for logistical reasons, it was not possible to build a pneumatic tube system from no. 7 blast furnace similar to the one that carried samples to the quality control center from the other blast furnaces.
This case does not concern the company's decision to assign testing work for no. 7 blast furnace samples to employees in the CCI sequence. Rather, the union grieves the transfer of sampling work from the other

blast furnaces away from the quality control center and to the no. 7 lab staffed by CCI sequence employees. There was significant testimony about the reasons for this change. The company has shut down both of the furnaces in plant 3 and operates only one or two of the furnaces in plant 2. The company has dismantled some of the unused furnaces, though two of them are moth-balled and could be reactivated, but apparently only with significant investment.

Obviously, the reduction in the number of blast furnaces operating in plants 2 and 3 has decreased the work load in the quality control center. There was no hard data on the extent of the reductions, but Leonard estimated that in 1980 (when all of the plant 2 and 3 blast furnaces were in operation the quality control center would have tested about 126 iron samples and 42 slag samples per day. Now, aside from no. 7, the company operates only one or two blast furnaces at a time. This means that the quality control center tests somewhere between 10 and 24 iron samples and 6 to 12 slag samples a day, depending on whether one or two furnaces is operating. In addition, the pneumatic tube system from plant 2 is no longer operative, meaning that the samples had to be picked up.

Although these factors contributed to the company's decision to move the testing of the plant 2 samples to the no. 7 blast furnace lab, they were not the sole, and perhaps not the most important, considerations. In 1991 the company reorganized and put the coal, coke and iron lab under the control of the operating department. Later that year, the company installed an automated system to prepare test samples of both iron and slag. The automated system uses robotics to do automatically what the test preparer did manually. Analysis of the sample is still performed in the same fashion. Moving all of the testing work to one location, however, has allowed the company to minimize the variability between samples and increase the reliability of the data.

The robot now does what several different employees used to do. Although there is some variability in the work the robot produces, it is less significant than the variability between employees or even the variability produced by one employee who does the same work over and over. Also, doing the analysis on one x-ray machine allows the company to minimize the difficulties it encountered when it had to resolve discrepancies between tests performed at CCI and those done at the quality control center.

The union contends that the company had no right to transfer work across seniority sequence lines, which it did when it relocated plant 2 blast furnace testing from the quality control lab to the CCI sequence. It claims that the testing from plant 2 and 3 blast furnaces is a separate and recognizable body of work which the employees in the sampling and analytical sequence have performed with reasonable consistency and exclusivity. The union claims, then, that the work cannot be removed from those sequences unless changes have rendered the remaining work only residual. While the union concedes that the volume of work in the quality control center has decreased, it asserts that it has not reached the residual level. Finally, the union claims that the increases in efficiency gained by centralization of all testing into one facility are not themselves reasons justifying the transfer and cannot defeat the jurisdictional claim of the grieving employees.

Discussion

This case replays what have become familiar refrains from both sides. The Inland Steel Company has been losing money and is getting smaller. As this downsizing occurs, the company looks for opportunities to increase the efficiency of its workforce, sometimes by combining jobs or by transferring duties from one group of employees to another. The union, on the other hand, is fighting fiercely to protect jobs in an industry where employment opportunities seem to be shrinking. Part of its strategy is to rely on the historic jurisdictional claims to work that have grown up during the operation of the mill. This is one such case. Both sides can point to prior arbitration awards to support their positions and, indeed, each usually takes some comfort in two awards I have issued, the company relying on Inland Award 835 and the union pointing to Inland Award 836.

The starting point is Inland Award 813, a case much admired by the union and, not surprisingly, disliked by the company. In that case the company proposed to start a new job that would prepare coils that were to be shipped to IN/TEK. Among the tasks to be performed by this new position were switching duties (which were ordinarily performed by employees in the switching sequence of transportation) and crane operation (which was ordinarily performed by employees in the crane sequence.) Arbitrator McDermott noted that "position rated jobs have no right to claim that past assignment of duties to them requires that such duties always be assigned there. . . ." That was not really the issue, he said, because the union was not merely protesting the company's proposal to assign duties to other employees, but had grieved the company's right to transfer duties outside the seniority sequence that had historically performed them. It was in response to that argument that Mcdermott wrote the words often cited by the union in cases such as this:

By the language of Article 13, Section 3, paragraph 13.11, the parties have agreed that existing promotional sequence diagrams shall remain in effect for the life of the Agreement unless changed by mutual agreement. . . . That language must have been intended to carry some meaningful protection for jobs in a given seniority sequence, less than plant wide. If so, and it has pretty generally been read that way, if a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity, then concepts of paragraph 13.11 and local working conditions principles of Article 2, Section 2 require that such work not be transferred across seniority unit lines.

As McDermott went on to note, in cases such as this, the union claims exclusivity and the company tries to offer examples of other seniority sequences performing the same work. Often, determination of the issue of exclusivity turns on how the body of work at issue is defined. I have addressed this issue in the past and have noted that, in the ordinary case, the union tries to narrow the body work as much as possible, thus decreasing the possibility that employees from other sequences will have done any of it. The company, on the other hand, has an interest in defining the work as broadly as possible, thus increasing the likelihood that others perform it. Those are exactly the positions the parties take in this case.

The union sees the relevant body of work as the preparation and testing of samples from plant 2 and 3 blast furnaces. If this characterization is correct, then there is little doubt that the union has demonstrated the necessary consistency and exclusivity. There are some instances of such testing being done elsewhere, but only sparingly and only when the quality control lab was down. Such a finding would not resolve the case, however, because the company claims that there are changes which justify its decision to move the work from the quality control lab to the CCI. The company's primary argument, however, is that focusing solely on the testing of plant 2 and 3 blast furnace samples is artificially narrow. Exactly the same work has been done by the CCI sequence employees at the no. 7 blast furnace since 1980. So viewed, the union cannot claim exclusivity for the sequences in the quality control lab.

Both sides rely on one of my previous awards. The company points to my opinion in Inland Award 835. There, the union had grieved the company's decision to assign segment zero roll build up work to shop services mechanics rather than to no. 2 BOF/CC mechanics. The shop services mechanics had routinely performed the roll build up work for all segments other than segment zero. Those segments had been held in the department and serviced by department mechanics. I questioned whether the union had established the requisite exclusivity, even if segment zero roll build up could be seen as a separate body of work. Ultimately, I did not resolve that issue because I found that segment zero roll build up could not realistically be separated from the roll build up work done to the other segments. Thus, the body of work was broader than the union claimed and there was clearly no exclusivity.

In the course of that holding, I authored language often cited by the company in cases such as this one:

> The question here is not what the segment 0's do but instead what the craftsmen do when they service them. . . . [T]he issue is whether the work involved in building up segment 0's is a separate and distinct body of work . . . I cannot conclude that it is.
>
> All of the segments require the same work and the same skills. Although the matter is not entirely free from doubt, on balance I think I have to identify the relevant body of work by looking to the skills the workers are expected to employ, especially when those skills are applied to nearly identical segments of one production process.

There is no question that this language is relevant to the instant dispute. Thus, the company urges that here, as in Award 835, the employees involved used the same skills and performed essentially the same work. It would make no sense, then, to see the testing in the quality control lab as a separate body of work.

Although I concede that the language from Award 835 is relevant, there are limitations in its application. I did not say, and my language could not fairly be meant to read to mean, that such determinations are only made on the basis of the skill applied. As Mr. Smith forthrightly acknowledged in his brief, the employees at issue in Award 835 were craft employees, whose special skills are a matter of some importance. Skill alone could not be determinative, at least for position rated employees. No doubt there are employees all over the Harbour Works who push buttons or throw levers. But the company could hardly claim that these jobs are all one body of work, merely because they employ the same skills.

In Award 835 I adverted not only to the skills applied by these craftsmen, but also to the fact that they applied those skills "to nearly identical segments of one production process." In fact, I referred specifically to credible company testimony that segment zeros had been held in the department because the department mechanics had time to do some of the work and the segment zeros were smaller than the other segments. This is not to say that skill is not a matter of some importance. In this case, for example, the employees

used identical skill to accomplish the same thing, at least until the advent of the automated system. But is also important that in each case they are testing blast furnace output for the same purposes.
For its part, the union relies on Inland Award 836. In that case, the company had stopped scheduling the car blocker occupation whose duties, by the time of the elimination, consisted mostly of reconditioning, wrapping and shrouding coils. The car blocker had been part of the shipping sequence and the union's grievance requested a return of the wrapping and reconditioning work in the shipping department to the shipping sequence. I sustained the grievance, holding that the company had no right to transfer work across seniority unit lines. The significance of that holding, the union claims, is that nearly identical work was being performed in another sequence by wrappers, which had been the recipient of the duties formerly performed by the car blockers. It cannot simply be the skills that are determinative, the union claims, because exactly the same skills were employed by two different sequences (indeed, almost exactly the same work was performed by two different sequences), yet I ruled that the car blockers had established exclusivity to a portion of the work. The union would have me make the same holding in this case. that is, although the CCI and quality control center sequences performed the same work, the sequences in the quality control center had established an exclusive right to part of it.
Obviously, Award 836 recognized that a seniority sequence can establish exclusivity to a recognizable body of work, even though some other seniority unit may perform similar work elsewhere in the plant. It is a bit of a stretch, however, to say that my opinion in Award 836 made such a ruling or even endorsed the conclusion. As I have told the parties on numerous occasions, I decide only those issues they give to me. A review of the opinion in Award 836 indicates that the issue the parties tried was not whether exclusivity could be defeated when others in the plant performed similar duties. Rather, the question I decided was whether changed circumstances in the shipping department were sufficient to render the car blocker's work so minimal in amount that the occupation could be eliminated. There is nothing in the opinion which indicates that the company also claimed the car blocker did not perform the duties exclusively.<FN 1>
That does not mean that the car blocker case is of no use to the union. It would appear to represent an instance in which the company did not contest exclusivity, even though other seniority sequences were doing similar work. Moreover, this is not the only recent example in which the company has made such a concession. The day following the instant case, I heard Inland Award 870, in which the company transferred certain work from the pump house sequence to positions in other seniority sequences. There was no dispute that work identical to that performed by one of the employees in the pump house sequence was also performed in different pump houses by the Attendant Utility Driver, an employee in a different sequence.
The issue the parties tried in Award 870 was whether certain changes reduced the pump house sequence work load to the point where elimination was justified. At one point I asked Mr. Smith whether reasonable exclusivity was an issue and he replied that it was not. As in the car blocker case, then, this represents an instance in which the company has recognized reasonable exclusivity, even though other employees are performing similar work that requires the same skills. On the other side, of course, is Award 835 in which the similarity of the work involved, as well as certain other factors, defeated the union's claim of exclusivity.
The point is that neither Award 835 or Award 836 resolve the instant case. Both concerned similar issues, but neither is dispositive under the precise facts at issue here. Because the question of exclusivity was not tried in either Award 836 or Award 870, the standards by which one is to judge exclusivity when others are performing similar work are not clear. In this case, there seems no doubt that a claim of exclusivity existed up until 1980, when the company opened the lab at no. 7 blast furnace. A union challenge to the assignment of the testing work then to the CCI sequence might have proved successful. The question now is whether the transfer of admittedly identical work from the quality control center to the CCI can be raised at this time.
The union asserts that a relevant body of work is to be identified with reference to how the company has assigned the work. In this case, for example, the company was content to have plant 2 and 3 testing performed at the quality control center and the no. 7 blast furnace testing done at a separate location. As evidence of the company's intent to administer the work in that manner, the union cites Union Exhibit 2, a mutual agreement in which the parties, among other things, agreed that "The company is committed to a back-up procedure at the quality control center for determination of hot metal from plants No. 2 and 3." While not claiming that this agreement creates jurisdictional rights, the union argues that it recognizes the way in which the work was to be assigned. Rather than being routinely shipped from the quality control

center to the lab at no. 7 blast furnace, the company committed to a back-up procedure at the quality control lab.

This is important evidence of the company's intent to administer the work in a manner that recognized the jurisdictional claims of the parties. But it is undermined by a provision in the main body of the agreement: "11. Nothing in this mutual agreement shall be construed [to] . . . limit the company's right of assignment." This is important language in light of the action the company had already taken. Perhaps the union could have complained successfully when the testing work was first assigned to the CCI sequence. But it did not do so and the company continued to give part one part of the work to the quality control sequence and another part to the CCI sequence.

Obviously, the question of how such work assignments could be made was on the minds of the parties when they negotiated the mutual agreement. After all, they agreed to Appendix E, which expressed the company's intent to direct a certain portion of the work to the quality control sequences. But they also agreed that nothing in the mutual was to limit the company's right of assignment. Conceivably, those words could mean many things. But they are consistent with the position the company takes in this case. That is, the company asserts that, whatever the situation may have been before 1980, its assignment of identical work to a different sequence in 1980 secured for it the right to determine where such work would be assigned in the future. While the mutual agreement expresses an intent to leave some of the work in the quality control sequences, the language of paragraph 11 gives the company the flexibility to change those assignments.

There is, then, some similarity between this case and a case the union cites as evidence of the importance of early action. In American Bridge Division, U. S. Steel Corp. Grievance A-58-3 Arbitrator Whitney McCoy considered a similar claim by the union when the company bought a lift truck and assigned it outside the lift truck sequence. McCoy's reasoning in sustaining the grievance is similar to that employed by arbitrator McDermott in Inland Award 813. He warned, however, about the dangers of gradual abolition:

At what point could this gradual abolition of the lift truck seniority unit be stopped? To my mind, the logical place to stop is at the beginning. A failure to do so would be to create a precedent which could only make the next act of whittling-away easier.

Here, the whittling started about 12 years before the instant case arose. I do not mean to suggest that the prior union leadership was delinquent in not filing a grievance when the work was assigned originally to the no. 7 blast furnace lab. Hindsight is always more acute. Moreover, it is not now possible to reconstruct the circumstances -- and the other issues -- faced by the parties at that time. In context, the assignment of this work to the CCI sequence may have seemed a matter of little moment. No one could have predicted how the mill would shrink in the ensuing years and how increasingly important jurisdictional rights would become. Moreover, I do not mean to suggest that the union automatically forfeits important rights merely by failing to grieve. I have addressed that issue in other cases and I have recognized that a decision not to grieve a particular management decision does not necessarily amount to acquiescence.

In this case, however, management took work that had been performed exclusively by only the quality control sequences and assigned it across seniority sequence lines. Then, having claimed that right of assignment, the parties subsequently negotiated a mutual agreement which preserved the company's right to assign the work. In those circumstances, I cannot hold that the testing of blast furnace iron and slag in the quality control center is a body of work separate and apart from the work done by the CCI sequence. Because I have found that the union cannot establish the requisite exclusivity, I need not address the other issues in the case.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

March 12, 1993

<FN 1>Unfortunately, I did not retain the briefs from this case so I am unable to say whether the parties made any arguments concerning exclusivity. At the very least, I made no rulings about exclusivity.