

Award No. 870
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

USWA LOCAL UNION 1010

Arbitrator: Terry A. Bethel

March 28, 1993

OPINION AND AWARD

Introduction

This case concerns the company's decision to eliminate two positions in the utilities department. The case was tried at the company's offices in East Chicago, Illinois, on January 22, 1993. Brad Smith represented the company and Jim Robinson presented the union's case. Both sides filed pre-hearing briefs and submitted the case on final argument.

Appearances

For the union:

J. Robinson -- Chrm., Grievance Committee

M. Mezo -- President, Local 1010

W. Spenser -- Griever

M. Johnson -- Steward

D. Leimer

T. Kolbert

M. Stanek

R. Lipovitch

For the company:

B. Smith -- Arbitration Coordinator

E. Arnold -- Section Mgr., Utilities Dept.

M. Arnold -- Supervisor, Utilities Dept.

R. Bogusz -- Supervisor, Utilities Dept.

V. Soto -- H.R. Generalist, No. 4 BOF

A. Brown -- H.R. Generalist, Accting. Dept.

W. Peterson -- Project Rep., Union Relations

Background

This is another in a series of cases in which, as the Inland Steel Company gets smaller, the company either eliminates jobs or combines into one occupation duties formerly performed by those in other jobs. This case concerns the company's decision to eliminate the positions of pump station operator (PSO) and auxiliary pump station operator (AO) in the utilities department. Both occupations were part of the same sequence, the mechanical operating pump station sequence, commonly known as the pump house sequence. They were, in fact, the only occupations in the sequence. The union's complaint in this case is not merely that the sequential occupations were eliminated but that the duties they performed were assigned to other occupations across seniority sequence lines. Thus, as it has in other recent cases, the union relies on Article 13, section 3, as assisted by the principles of Article 2, section 2.

As the union asserted in both its opening statement and its final argument, this is a seniority case. It's claim is that the company cannot totally eliminate a job (or, in this case, an entire sequence) and then transfer the duties of that position across seniority sequence lines. As usual, the union relies on Arbitrator McDermott's decision in Inland Award 813 in support of that position. The union concedes, however, that an occupation can be eliminated and its remaining duties distributed elsewhere if, as a result of changes in the operation, nothing remains except minimal or residual duties. That is the issue in this case. There is no question about the fact that as a result of technological improvement, and as a consequence of the rationalization of many Inland operations, less work existed for the affected occupations than was formerly the case. The question is whether the remaining duties were merely minimal and residual or, as Mr. Robinson put it in his final argument, "How much is enough?"

The question is easier to put than to answer. Other cases have addressed similar issues, including some written by me, but none has fixed an objective test the parties can rely on. Moreover, one might question whether any such objective measure is possible, since much depends on the facts and circumstances of each particular case.

The company's witness was Mike Arnold, maintenance supervisor in the utilities department. He said the department had the responsibility to provide and control utility services to all four plants, including power, steam, water (in various applications) and waste treatment. The occupations affected in this case worked in pump houses, which provide circulating water to internal customers throughout the Harbor Works. Arnold described the service water system as a "gigantic loop feed system" in which the various pump houses start or stop equipment to affect pressure, according to "what's going on in the system." The number of such adjustments has decreased significantly, however, as Inland's operation becomes more "stable" as a result of rationalization. I understood this to mean that because there are now fewer operations, and because the active operations concentrate on a narrow mix of products, there is less call to adjust the system to variations in operation.

In addition to the decreased operations, Arnold also cited a number of technological changes that have reduced the work load for the PSO and the AO. At one time there had been a PSO and an oiler at each pump house. Eventually, the oiler was eliminated and the numbers of PSO's declined. The AO was created to supplement the PSO. At the time of the elimination the company was scheduling one PSO (located at pump station 1) and one AO per turn on a 21 turn basis. The PSO was responsible for the control of all of pump houses 1, 2, 3, 5 and 6. If pumps had to be started or stopped at pump house 1, the PSO would do it himself. If pumps had to be started or stopped at one of the other pump houses, he would direct another employee to do it. The AO performed that function at pump houses 2 and 5 and the Auxiliary Utility Driver (AUD) did the work at pump houses 3, 6, and 7.

The AUD is part of the mobile operator sequence in the utilities department. According to Arnold, the AUD functions as a mobile force throughout the company. These employees primarily serve unmanned utilities department facilities and sub stations. He described them as "all around trouble shooters." When the PSO was still assigned to pump house 1, he monitored the plant wide system and directed or made changes as necessary. He performed this duty through the use of two computer screens which would tell him where and when adjustments were necessary. He would then relay the information to the AO or the AUD, depending on where the work needed to be done. A primary justification for the elimination of the PSO was the elimination of this monitoring system. In September 1992, the company replaced it with an automated system which sends out an alarm and pages the AUD directly. The AUD then goes to pump house 1 and determines where the problem is and travels to the appropriate pump house and makes the necessary adjustment.<FN 1>

Pages 7 and 8 of the company's brief detail the extent of the changes made in the PSO's job and the work remaining as a result of those changes, including installation of the automatic paging system. Because the union stipulated to the accuracy of this information, I need not address it in great detail. It shows that virtually all of the PSO's responsibilities were eliminated. Arnold testified that the only item of work remaining for the PSO was the need to monitor and lubricate the base loaded pump at number 1 pump house. This activity takes about 10 minutes or so a turn and is now performed by the AUD. In addition, the PSO would have to respond to any alarms in the number 1 pump house. The amount of such response time varies from quite brief (just a few minutes) to an hour. In number 1 pump house, however, the alarms do not occur with great frequency. In fact, Arnold said there had been no alarms in no. 1 pump house since the company stopped scheduling the PSO in September, 1992.

The company provided a similar chart which detailed the work performed by the AO both before and after the reduction of operations and as the result of certain technological changes. As indicated above, the AO had the responsibility of answering alarms in pump houses 2 and 5. That, however, was not the extent of his duties, because he was also responsible for lubrication, maintenance and planned preventative maintenance (PPM) at all pump houses. In addition, the AO made observational rounds, or "trips," in pump houses 2 and 5. These were routine rounds in which the AO observed fluid levels and, in general, observed whether the equipment was operating properly. The AUD made observational rounds or "trips" at the remaining pump houses.

The chart on pages 8, 9, 10, and 11 of the company's brief indicates that the AO's responsibilities for lubrication, maintenance and PPM at the various pump houses had declined significantly by the time the position was eliminated. In fact, the company's evidence -- the accuracy of which was stipulated to by the union -- indicated that there remained only about 187 hours of such work per year. Because the AO had been a 21 turn operation, this amounts to less than 2% of the normal work load.

Although these figures would indicate that the amount of work remaining was merely residual, there is no dispute that these numbers do not represent all of the work performed by the AO. As indicated above, the AO also made observational rounds at pump houses 2 and 5 and responded to alarms at those same

locations. The company acknowledged as much in its case in chief, but did not at that point offer estimates about the time required for such duties. There were two union witnesses who testified about the time it takes to respond to alarms and to make observational rounds.

Willie Spenser is an AUD who performs some of the work that was formerly performed by the AO. He testified that the maintenance and greasing work that AOs formerly performed was, at the time of the hearing, being done by MMS. The AUDs were responding to alarms in pump houses 1, 2 and 5. On cross examination, Spenser said there were about 3 to 5 such alarms per turn for those pump houses. Because Arnold testified that there had been no alarms in no. 1 pump house since the new paging system was installed in September, I assume all of these alarms were in pump houses 2 and 5 and would otherwise have been answered by the AO. The response time involved in each alarm varies. Spenser said it takes him five to ten minutes to get to pump house no. 1, which is necessary for him to identify the source of the alarm. It then takes him an additional five to ten minutes to get to the location which sounded the alarm and do the necessary work. Doing the work could take ten to fifteen minutes, or it could take up to an hour, depending on what is required.

Spenser also testified about the time it takes to make trips through pump houses 1, 2 and 5. Not each of these trips would have been made by the AO, since he covered only pump houses 2 and 5. But pump house 1 was covered by the PSO, who was a member of the same seniority sequence. The time it takes to make such trips, then, represents an amount of work transferred across seniority sequence lines. Spenser estimated that, including travel time, he spends approximately two hours performing trips in those pump houses, broken down as 25 to 30 minutes for pump house 1, an hour or more for pump house 2, and 25 minutes for pump house 5.

On cross examination, Smith got Spenser to offer similar time estimates for the other three pump houses where he must make trips and questioned how Spenser could have time to do such time consuming work every day. Spenser acknowledged that he did not always get to every pump house every day. However, he said he always goes to pump house 1, always goes to pump house 2, and almost always goes to pump house 5. Tim Kolbert, a temporary AUD who was previously an AO, testified that he agreed with Spenser's time estimates and said that he spends as much time in pump houses 2 and 5 as an AUD as he did as an AO, which tends to show that there is no less work available now than there was before the change.

Arnold testified on rebuttal and questioned the time estimates given by Spenser. He said it should take Spenser no more than 5 minutes to do a trip through pump house 1, as opposed to the 25 minutes estimated by Spenser. Spenser's 25 minute estimate included travel time and Arnold's 5 minute estimate did not, a matter I will address below. Arnold acknowledged that a trip through pump house 2 would take longer, but he disagreed with Spenser's estimate of 1 hour. Arnold estimated an AUD could do a trip in 25 minutes. Arnold did not dispute Spenser's estimate of 25 minutes to do a trip through pump house 5, but he said this was necessary only about 3 or 4 turns a week. Spenser said he did not visit number 5 every turn but he said he made a trip there "almost" every turn.

The company urges that it is improper to consider travel time in assessing the amount of work available to the AO. Although Spenser's estimates included travel time, Arnold said that the AUD is constantly in motion and plans his route through the plant in the most efficient manner. Although it may be a ten minute drive from pump house 1 to another pump house, the AUD plans other activities along the way, so that not all of the travel time can be allocated to the pump house trip. The pump houses are just a small portion of the AUD's responsibility.

I would agree with this argument if the question were how much time the AUD devotes to answering calls at pump houses and performing routine trips of pump houses. In my view, however, that is not the issue. Rather, the company claims that it had the right to eliminate the PSO and the AO because they had little work to do. Its claim is that their duties were so minimal and residual that they could be transferred to other seniority classifications. The question is not how long it takes those other classifications to do the work; rather, the question is how long it took the eliminated occupations to do the work. That is, the question is how much work was available to the AO, not how much more efficiently the company can have the work performed by assigning it elsewhere. Because the AO had to travel from point to point to make trips and to respond to alarms, it is fair to view that travel time as part of his work responsibilities. The travel time, then, should be included rather than excluded.

It is clear that there is not 8 hours of work per turn for either the AO or the PSO. The question is whether there is so little work for these occupations that it is only minimal and residual. If the PSO were the only occupation at issue, the case would be easy. The automatic paging system has virtually wiped out his job. There remains nothing for him to do except respond to alarms at no. 1 pump house, an event that seems

seldom to occur, and make a trip through the pump house on each turn. That activity takes somewhere between 5 and 25 minutes, depending on whether one credits the estimate of Spenser or Arnold. In fact, their testimony is not that far apart. Spenser's estimate includes the time it takes him to travel to no. 1 pump house, but that travel time was not necessary for the PSO since he was already there. It is fair to believe, then, that the PSO had only about 5 or 10 minutes of work per turn, an amount that qualifies as minimal or residual no matter how one defines it.

The AO presents a more difficult issue. Spenser estimated that it takes him an hour, including travel time, to do a trip of no. 2 pump house. Arnold estimated 25 minutes, not including travel time. There was no testimony about precise travel time between locations, but there were general estimates of 5 to 10 minutes of travel time. Although I thought both Spenser and Arnold were credible, it is fair to believe that, in making estimates, each gave his respective side the benefit of the doubt. An estimate of 40 to 45 minutes, including travel time, is probably representative of the time it takes to do a trip of number 2 pump house. As noted above, Arnold did not question Spenser's assertion that it takes him 25 minutes to do a trip of number 5 pump house. The two disagreed, however, about how often this trip is accomplished. Again, it is probably fair to believe that each witness estimated in his own favor. I'm inclined to believe that this 25 minute task is not performed on each turn, but that it is done more often than 3 or 4 turns a week. Even so, the addition of this additional time to the time it takes to do a trip of no. 2 pump house would still leave the AO with little to do, probably not more than an average of an hour a day. What tips the balance is Spenser's testimony about the alarms.

Spenser testified that he responds to 3 to 5 alarms per day for pump houses 2 and 5, work that formerly would have been performed by the AO. At the time of the elimination, it took him 5 to 10 minutes to get to no. 1 pump house to locate the source of the alarm, then 5 or 10 minutes to get to the source, and then 10 minutes to an hour to fix the problem. Arnold offered no rebuttal concerning the number of alarms, the time it takes to respond to them, or the time it takes to remedy the problem.

If one assumes an average of 4 alarms per turn, an average of 10 minutes travel time², and an average of 20 minutes to remedy the problem, this amounts to an additional two hours per day. No doubt this exceeds the time spent on some turns, but Spenser testified without rebuttal that he could get as many as 5 alarms a day for these two pump houses, and that it could take as much as an hour to remedy the problem. An average of two hours, then, would seem a fair estimate of the time spent. Moreover, this does not include the time spent responding to nuisance alarms, which has been a considerable problem, although I believed Arnold's testimony that the numbers of these should decrease. Nor does it include the small quantity of work the AO performed in PPM.

In sum, then, the employees in the pump house sequence were performing an average of over three hours of work per turn at the time the two occupations were eliminated. The AO was spending approximately one hour making trips and two hours responding to alarms; the AO performed a very small amount of maintenance work; and the PSO made a trip through the number 1 pump house each day, taking perhaps 10 or 15 minutes. The question here, as I understand it, is not whether the company had to continue scheduling both of these employees. Rather, the question is whether the company can eliminate the sequence entirely by transferring across seniority unit lines this body of work that the sequence had performed with reasonable consistency and exclusivity.³

Discussion

As I observed in another case raising similar issues, prior arbitration awards do a fairly good job of stating the issue in a case like this one. But they offer little guidance about, as Robinson put it "how much is enough." Inland Award 270 would be controlling, were the PSO the only occupation at issue in this case. There, the introduction of new communications equipment had eliminated the need for the occupation of coordinator. Although there, as here, the union argued that the work of the coordinator was still being performed, albeit through different instrumentalities, the arbitrator found that the coordinator's principal function of courier had been "Abandoned, utterly." This is not unlike the situation that exists in the instant case for the PSO.

Also relevant to the company's case is Inland Award 809, in which the company eliminated the occupation of weigher and reassigned his residual tasks outside the seniority sequence. There, as here, the company's decision was influenced by technological innovation. As in this case, the union complained that all of the weigher's responsibilities remained but that they had merely been redistributed elsewhere. The company countered that, were it to restore the weigher occupation, it would have only fifty to ninety minutes of work per turn. Moreover, at least some of that work was duplicative of work done by employees in other occupations.

There are two significant differences between Inland Award 809 and the instant case. Although the company transferred work across seniority unit lines in Award 809, it did not take away all of the work of the seniority sequence. There were other occupations besides weigher in the sequence but the company argued successfully that they were so far removed from the weighers that they would be unable to perform any of the weigher's residual duties. Thus, the company was able to transfer the work to employees in other seniority units. This is a matter of some significance. In establishing the test to be applied to such cases, Arbitrator McDermott said:

Analysis must concentrate on whether or not, in light of all relevant circumstances of cause and effect on a case-by-case basis, significant harm would be done to a seniority sequence by the disputed transfer of duties. The company likely would agree that, consistent with paragraph 13.11, a seniority unit could not be eviscerated by transferring all duties of all jobs to another seniority sequence. The union probably would agree that no violation of paragraph 13.11 would arise from movement of a minor duty from a job in a seniority sequence to a job in another. (emphasis added)

In the instant case, the company did not merely transfer the work of a particular job across seniority unit lines. Rather, its actions, in the words of Arbitrator McDermott, would "eviscerate" the unit, since neither of the jobs in the pump house sequence would remain. I do not understand Award 809 to mean that seniority sequences must always endure, regardless of how little work remains. But the decision seems clearly to contemplate that the complete elimination of a sequence is a factor to be considered in answering the question "how much is enough."

The other significant difference between Award 809 and the instant case involves the amount of work remaining. In Award 809 the company asserted that if it were to restore the weigher occupation there would be only about 50 to 90 minutes of work to be performed, some of which would be duplicated by other occupations. In the instant case, on average, there is more than three hours of work to be performed. When one takes into account that the instant case involves the elimination of an entire sequence, the difference between the duties remaining in Award 809 and the instant case becomes even more significant.

I have some sympathy for the company's position in this case. As the company's financial picture worsens, management is looking for innovative ways to perform the same amount of work with fewer employees, thus reducing cost and, one hopes, producing profits instead of losses. I have no doubt that the change made here was based on sound management strategies and represents a more efficient manner of performing the work at issue. One might question whether any manager would knowingly leave in place an employee who had, on average, less than half of the standard eight hours of work to perform each turn.

It is neither my responsibility nor my right to make such management decisions. As I have observed before, collective bargaining agreements sometimes serve values other than efficiency. In the steel industry (and others as well) the parties have sometimes negotiated provisions that were intended to foster security at the expense of efficiency. No doubt, many such provisions were negotiated when times were good and when the likelihood of implementation seemed remote. They are no less enforceable, however, merely because those days are gone.

As Arbitrator McDermott recognized in Inland Award 813 the language of paragraph 13.11 "must have been intended to carry some meaningful protection for jobs in given seniority sequences. . . ." The work, if done with consistency and exclusivity (criteria which are not at issue here) is not to be transferred across seniority sequence lines unless changes have rendered it merely residual in nature. I have found that in this case more than three hours of work per turn continues to exist. Although I cannot say exactly where the line is to be drawn, the amount at issue here is not insignificant and cannot qualify as merely residual or inconsequential. Accordingly, I must sustain the grievance. That does not mean that I am ordering the company to continue scheduling both occupations in the pump house sequence. Rather, I find that the total work available is not inconsequential and therefore cannot be transferred across seniority sequence lines.<FN 4>

AWARD

The grievance is sustained. The company does not have the right to transfer the work of the pump house sequence across seniority unit lines. The company shall provide a make whole remedy.

/s/ Terry A. Bethel

Terry A. Bethel

March 28, 1993

<FN 1>At the time of the hearing, it was necessary for the AUD to travel to pump house 1 in order to determine where the work needed to be done. The company asserted that the system would be upgraded by February 1993 to eliminate the need for this trip. That is, the AUD would be able to determine which

facility the alarm related to without traveling to pump house 1. This improvement was not in place at the time the change was made and therefore cannot be relied on principally as a justification for the company's action. This evidence, however, has some relevance to show that even less work would be required in the future.

<FN 2>This average may be lower than actually existed at the time the change was made, but takes into account changes that will make it unnecessary to travel to number 1 pump house.

<FN 3>The company raised no issue about either exclusivity or consistency. In fact, in response to my inquiry, Mr. Smith said there was no question about these factors. As I mentioned in my opinion in the companion case, Inland Award 869, I have some difficulty understanding why there was no challenge to the seniority unit's exclusivity in this case, since other occupations seemed to perform the same work.

<FN 4>I have read the other cases cited by the company and find them not to be dispositive. For example, the company relies on Bethlehem Steel Corporation Decision No. 2880, which allowed the company to stop scheduling the occupation of gauge setter and to transfer the residual duties across seniority unit lines. This case would be of great importance if the only position at issue in the instant case were the PSO. In 2880 the arbitrator found that, of the two primary functions of the gauge setter, technological change had eliminated some of the duties of one function and all of the duties of the other function, which were among the most important responsibilities of the occupation. Although he did not assign a time value, the arbitrator found that the duties that remained "require significantly less time and effort than did the arguably comparable duties performed by the gauge setter." As I would be able to hold here were it not for the AO, the arbitrator found the changes so extensive that they justified the decision to stop scheduling the gauge setter. The arbitrator also noted that there was no difficulty in assigning the remaining duties across seniority unit lines because "It cannot be concluded that a significant proportion of the duties of the gauge setter were assigned to positions in other units for the first time." In other words, the gauge setter did not enjoy the exclusivity and consistency conceded by the company to exist in this case.

Arbitrator Fishgold relied, in part, on 2880 in Inland Award 779, which involved the deletion of testers assigned to various departments in the mill. As was true in Award 809, the effect of the company's actions in Award 779 was not to eviscerate an entire seniority sequence, since some of the testers duties were reassigned to the metallographist, which was in the same seniority unit. Moreover, while the opinion is somewhat confusing, the arbitrator seemed to find that the amount of work remaining for the tester was less than is at issue in this case. Arbitrator Fishgold cited 2880 for the proposition that "many of the reassigned duties were already similar to or a part of the duties required of the other described and classified jobs in the other units." I do not read this to mean that the justifying factor was merely that the company gave work to a group of employees that was similar to what they were already doing, as happened in the instant case when the company gave the AO work to the AUD. Rather, use of the terminology "part of the duties required" conveys that, like case 2880 which he cites, Fishgold found that the work at issue was not performed exclusively and consistently by the seniority sequence that included that testers. Thus, there was no impediment to assigning it across seniority unit lines.