Award No. 876
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
local UNION 1010
Arbitrator: Terry A. Bethel
October 24, 1993
OPINION AND AWARD
Introduction
This case concerns the union's protest of the company's decision to reduce the crew assigned to number 2 coke battery by eliminating the scheduling of assistant heaters on the turns. The case was tried in the company's offices on September 17, 1993. Jim Robinson represented the union and Patrick Parker presented the company's case. The parties filed prehearing briefs.
Appearances
For the company:
P. Parker -- Sr. Rep., Union Relations
B. Smith -- Arb. Coord., Union Relations
A. Arsenault -- Mgr., Shop Services
L. Busch -- Mgr., No. 2 BOF/CC
H. Junker -- St. Staff Eng, HR Stlmkg.
A. Ellis -- Sec. Mgr., Ovens, Coke Plant
R. Lewis -- Sec. Mgr., Tech., Coke Plant
N. Fodness -- Human Res., Generalist
For the union:
J. Robinson -- Chr., Grievance Committee
M. Adams -- Grvr., Area 2
E. Barrientez -- Asst. Grvr., Area 2
A. Jacque -- 1st Vice Chr., Gr. Comm.
D. Lutes -- Secretary, Gr. Comm.
J. Henderson
R. Woloszyn
F. Richardson
J. Whitehead
R. Briscoe
D. Mendoza
M. Elkins
S. Woods
Background
Although not factually complex, this case presents a difficult issue of the company's right to reduce a crew size because of its own decision to change the way in which the work is performed. The union asks that I restore the crew of one heater and one assistant heater on each battery at the number 2 coke plant. Unlike some such cases, there is no dispute about the existence of the crew size. The question, instead, is whether the company has justified elimination of the assistant heater. The company bases its action on two different arguments, although neither is made to the exclusion of the other.
First, the company notes that a significant duty of the assistant heater (who is no longer scheduled on each turn along with a heater) had been to record temperatures, part of a process that required both the heater and the assistant. Shortly before the change at issue here, the company procured new equipment that allowed the heater to record temperatures without the help of the assistant. It was this change, in fact, that allowed the company the flexibility to reassign the assistant heaters to the day turn, where they now form a so called super crew whose principal responsibility is to maintain the flues.
It is this reassignment to day turn which the company relies on as the second justification for its action. The super crew maintains the flues -- work which used to be done on the turns by the assistant heaters -- and performs the other duties that were associated with the assistant heater occupation. The company argues that since the work has been reassigned, it no longer exists on the turns and, therefore, the basis for the establishment of the crew size of two employees no longer exists.

Discussion

Part of the company's argument hinges on its claim that the automation of the process of recording temperatures has justified its reduction of the crew size. Although there is no doubt that the company has purchased new equipment which makes it possible for this task to be performed by only one person -- thus freeing the assistant heater from the responsibility -- this argument does not warrant extended discussion. Although this work may have been an important function of the assistant heater, it was not one that commanded much of his time. Indeed, the company's own time study indicates that recording of temperatures was not a substantial part of his responsibility and that he had a significant amount of other work to perform. Moreover, the company cannot argue convincingly that this other work has disappeared. It still exists and is still being performed -- the company has just moved it to a different shift.

I turn now to the company's principal argument -- that is, that the transfer of the work ordinarily performed by the assistant heater to day turn justified its decision to stop assigning an assistant heater to work with the heater on each turn. The company concedes the existence of the crew and acknowledges that it is the company's responsibility to justify its elimination. The movement of the assistant heater's work to the day turn super crew, Mr. Parker urged, is sufficient justification.

The union asserts that this argument is circular. As Mr. Robinson said in final argument, "The helpers can only be moved off the turn if the crew can be broken up; the crew can only be broken up if it's justified and the movement of the helpers off the turn justifies the breaking up of the crew." The union relies on Sylvester Garret's award in U.S. Steel Grievance No. A-49-48 et seq., which says that "The change in the local working condition must be related to and reasonably flow from the change in the underlying basis for the existence of the local working condition."

As a matter of logic, the union's characterization of the facts seems to make sense. The company, the union argues, must justify the elimination of the local working condition of the crew size by some changed circumstance. That changed circumstance, however, cannot be merely that the crew's work was assigned elsewhere. In that event, Mr. Robinson maintains, the crew size protection would become meaningless. Even if I accept the union's characterization, however, it is not clear that the company's action is without support. In Bethlehem Decision No. 2255, for example, the company had reduced a crew as the result of reduced operations. When normal operations resumed, the company failed to restore an oiler-greaser on the night turn. Instead, it added an oiler-greaser to the bull gang on day turn to perform some of the same duties. Arbitrator Harkless noted that an established crew size could be reduced only if management could justify the change. He found ample justification, however, in management's decision to have the oiler-greaser work done on day turn rather than night turn: ". . .this management decision to have the regular duties which the oiler-greaser performed on the night turn done instead on the day turn significantly reduced the oiler-greaser work required on the night turn."

Similarly, in Bethlehem Decision No. 3407 Arbitrator Sharnoff found that the company had justified the reduction of a crew because "the company decided to reduce the amount of maintenance performed by the maintenance turn crews and instead to have additional maintenance performed on the daylight turns by the maintenance technicians." Both cases appear to advance the same justification the company claims here. The union's final argument did not explain how, if at all, these cases might be distinguished. In both of these cases, the arbitrators noted the company's right to determine the amount of maintenance work it will perform, as well as "whether and when" it will be performed. In the instant case, moreover, the company described the assistant's work as primarily maintenance, a characterization that seems justified from the testimony and one that the union did not contest. It is true that in neither of the cases did the company reassign the work by moving the people who had traditionally performed it to a different shift. It is not clear to me, however, that this difference is significant. The principal complaint raised in this case is the reduction of the two man crew. If the company has the right to reassign maintenance work at its discretion, which is what the two Bethlehem cases seem to say, it may not matter whether the company does so by rescheduling employees or by giving it to different employees.

Despite these cases, I need not address the extent to which the company may, at its discretion, move work from one turn to another, thereby defeating the existence of an established crew. In this case, the evidence indicates that the company did not act arbitrarily. Moreover, while its action was obviously intended to garner increased efficiency from its workforce, it did not act solely with that motivation. I understood the evidence to mean that partly because of the age and poor condition of some of the plant and equipment, and partly because of the demands of federal regulators, the company's method of operating the coke batteries was no longer able to keep them in compliance with federal air quality standards.

This, essentially, was the testimony of Randy Lewis. He said that as the batteries got older, there were more and more problems, so much so that the company failed an air quality audit. The company's response was to investigate how other companies with similar equipment managed to stay in compliance. Lewis testified that the ones who were most successful had a separate crew on day turn whose activities were devoted to cleaning flues and otherwise "attacking" problems as they developed. The company decided to emulate this system to tackle its own emissions problem. This change allowed the company to respond to problems quickly, a methodology that has helped the company stay in compliance.

This evidence seems clearly to indicate that the basis for the local working condition has changed. Whereas previously the condition of plant and equipment had made it possible for the company to achieve compliance by having assistant heaters perform the necessary maintenance on the turns (often with the help of the heaters), the deterioration of the plant has now made that more difficult, if possible at all. The company's response was to form a team of employees who could combine their energies (and take advantage of the better light available on day turn) to perform the necessary maintenance. This constituted a change in the local working condition that justified a change in the crew size.

The Operational Agreement

There remains the issue of whether the company violated the terms of a document known as the "Operational Agreement for Period of the Coke Production Slowdown. This agreement guaranteed certain sequential sizes for a period of slowdown in 1989 and "thereafter." The "long term" minimum sequence size for the heating sequence was 40 employees, a number that was admittedly based on the assumption that the company would have a crew of 2 employees (a heater and an assistant heater) on each battery on each turn. The Operational Agreement provides that the company will maintain the long term crew size "unless the basis for crew size is changed under Article 2, Section 2 of the collective bargaining agreement.

The union asserts that, even if the company has justified the elimination of the assistant heaters from the turns, it has not advanced sufficient justification for reducing the crew sizes agreed to in the Operational Agreement. The company questions whether the Operational Agreement is even at issue in this arbitration. When I raised the question during the union's final argument, Mr. Parker asserted that this was only a crew size case and that the issue of the Operational Agreement had not been raised previously. There is, in fact, no mention of the Operational Agreement in the third step minutes. However, Mr. Parker's claim that the issue had not been raised previously seems at odds with the opening sentence of his own brief: "Whether or not the company violated [various contractual provisions] or the Coke Plant Operational Agreement when it made the change complained of here. <FN 1>

In any event, the parties apparently agree that, if the issue of the Operational Agreement is joined, there is no claim that the company must maintain 40 employees in the heating sequence. Because of reductions in the coke plant, Mr. Robinson asserted that the proper number today would be 32 employees.

Obviously, the test established by the parties for reduction of the crew below 40 (now 32) employees is the same one that applies to a reduction of the crew size generally -- a change in the underlying basis for the local working condition. If the company has justified its decision to stop scheduling assistant heaters on the turns -- and I have found that it has -- then one might conclude that it has also justified reducing the numbers provided for in the Operational Agreement, since the same test applies there. Moreover, there is no question that the number of heating sequence employees identified in the Operational Agreement was based on the existence of the two man crew. If the company has justified a change in that crew size, then it may also have justified a reduction in the number of heating sequence employees overall.

Because the bulk of the evidence and the argument concerned the justification for elimination of the assistant heater, I find myself in need of more information in order to resolve this issue. From the union's perspective, I do not understand how the number of employees specified in the Operational Agreement has an existence apart from the crew size upon which that calculation was based. That is, if the number was based on the existence of a two man crew, how can it survive unchanged when the company has justified a change in the crew?

If the Operational Agreement applies and if the company has the burden of establishing a reduction in the number of employees, then I am confused about the company's justification for reducing the crew below 32 heating sequence employees. There was no evidence about the numbers of employees necessary to perform the work on day turn. The company introduced evidence about what the employees do, but nothing about the numbers or whether a reduction in the numbers is justified.

I will, therefore, reserve ruling on the Operation Agreement pending further information. Should the parties not resolve this dispute on their own, they can provide the additional information by testimony and argument at a time of their choosing.

AWARD

The company has justified its decision to reduce the heating sequence crew by not scheduling assistant heaters on the turns. The question of whether this action violated the Operational Agreement is reserved pending further information.

/s/ Terry A. Bethel

Terry A. Bethel

October 24, 1993

<FN 1> I note also that the grievance asserts that the company "violated the collective bargaining agreement and the mutually agreed to operational agreement for No. 2 coke plant. . . ."