

Award No. 878  
IN THE MATTER OF THE ARBITRATION BETWEEN  
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA  
LOCAL UNION 1010

Arbitrator: Terry A. Bethel

November 11, 1993

OPINION AND AWARD

Introduction

This case concerns the company's decision to change the way in which it determines whether employees report to work and leave work on time. The case was tried in the company's offices in East Chicago, Indiana on September 28, 1993. Jim Robinson represented the union and Brad Smith presented the company's case. Both sides filed pre-hearing briefs.

Appearances

For the company:

B. Smith -- Arb. Coord., Union Relations  
L. Coe -- Mgr., No. 4 BOF/CC  
J. Bradley -- Sec. Mgr., No. 4 BOF/CC  
S. Korthauer -- Sec. Mgr., No. 4 BOF/CC  
V. Soto -- Sr. Hum. Res. Gen. No. 4 BOF  
M. Carle -- Sec. Mgr., Shop Services  
A. Montaveras -- Mgr., Accting. Serv.  
R. Cayia -- Mgr., Industrial Rel.  
D. Maravilla -- Sec. Mgr., Mat. Hand. Serv.

For the union:

J. Robinson -- Chair, Grievance Comm.  
M. Mezo -- President  
A. Jacque -- 1st Vice Chair, Gr. Comm.  
J. O'Donohue -- Griever, Area 4, 4 BOF  
D. Harvey -- Asst. Griever  
J. Shumaker -- Steward  
G. Strauch -- Steward  
C. Durham  
B. Burgess  
H. Schilling  
J. Besterda  
D. Tomaszewski

Background

The parties submitted this case for decision pursuant to the following stipulation:

The company has replaced its previous manual time card based payroll system with an electronic system. Employees now "swipe" a card through an electronic reader upon entrance into and exit from the plant. The No. 4 BOF/CC Department has established that employees must be recorded as swiping-in no less than twelve minutes before the start of their turn, and swiping-out no less than twelve minutes after the end of their turn. Employees who violate this policy have their pay docked the amount of time by which they are in violation.

The company maintains that this is proper based upon the time necessary for employees to travel to and from the job site and the plant gate in order to be on the job for eight hours. The company maintains that the swipe times are evidence of and establish when an employee is tardy or leaving the job site early. The union believes that through this system the company exerts control over the employees, while they are on their own time, without showing that this control is necessary for the proper functioning of the plant and safety of the employees.

Accordingly, the parties have agreed to request the Arbitrator resolve this fundamental dispute and provide guidance as to the standards to be applied in determining whether an employee's pay was properly docked for arriving on the job late or leaving the job early.

This is an interesting dispute which concerns a significant change made by the company in the manner in which employees enter and leave the work place. Under the old system, the company had a so-called open gate policy, during which employees entered a clockhouse and received a time card from a guard. Although called a "clockhouse," the employees did not punch a time clock. Rather, if an employee entered the clockhouse during the open gate period, he was given a time card by the guard which he, in turn, would give to his supervisor upon arrival at the department. The cards were time stamped only if an employee entered or left outside of the open gate period.

The open gate covered a substantial time period. On second turn, for example, the open gate period extended from 6 a.m. to 7:45 a.m. at the beginning of the turn and from 2:30 p.m. to 4:15 p.m. at the end of the turn. An employee scheduled to work from 7 a.m. to 3 p.m., then, might enter the plant as early as 6 a.m. or as late as 7:45. Similarly, he could leave any time during the afternoon open gate period. As long as he entered and left during those periods, there would be no time-stamped record of his hours of attendance. That does not mean, however, that employees were free to come and go as they pleased. As I understood the testimony, the time card, though not stamped with a time clock, allowed the supervisor to control the hours that employees worked. That is,

employees were required to present the card to their supervisor when they arrived at the beginning of the turn. Moreover, they could not leave at the end of the turn until the supervisor returned their card. By using the time card as, in effect, an entry and exit ticket, the supervisor could determine when the employee arrived and control when he left. In addition, the supervisor would manually encode information on the card that was to be used by the payroll department. Employees gave the time cards to the guard as they left the plant.

Effective May 30, 1993, the company installed a new system that relied more on technology and less on supervisory control than the old entry-exit system. Each employee was issued an identification card which includes a magnetic strip, much like the strip on the back of a credit card. The magnetic strip contains employment information unique to each employee. When employees enter the plant, they no longer go through the guard house and obtain a time card from a guard. Instead, they "swipe" the card through a magnetic card reader. This action records the time employees enter (and leave) plant property, and it also uploads certain information about the employee to payroll department computers.

Alex Monateras, section manager of accounting services, testified that the company installed the new system for several reasons. The old system was obsolete and did not take advantage of new technologies. The new system is more accurate and less costly. In addition, the company had some reason to believe that OSHA may institute a requirement that the company be able to determine whether an employee is on plant property. With the so-called "swipe-in" points located at the gates to company property, the company will have the ability to access such information.

The union has not protested the company's change to this new method of entering and leaving plant property, at least not in this proceeding. Rather, it had grieved a change that is the result of both this new entry-exit system and one other innovation. Traditionally, employees have parked their cars in remote lots, walked from their cars to the clockhouse to obtain a time card, then proceeded to a bus stop where they boarded busses that took them to their work station. For the employees involved in this case -- from no. 4 BOF -- this process might take as much as 15 to 30 minutes each way. Although the busses were supposed to run on a ten minute schedule, there was testimony that they were sometimes late. Thus, employees might wait ten minutes or more for a bus after arriving at the bus stop (which followed the walk from the car), and they would then spend ten minutes or more on the bus. After exiting the bus they had to walk to their work station in the BOF. Employees were not paid until they arrived on the job. Thus, the time traveling between car and work station was uncompensated.

At least for no. 4 BOF employees, the company has virtually eliminated remote parking and bus service.<FN 1> Instead, employees now drive onto company property, passing the swipe point on the way in, and park outside the BOF. Although time estimates varied, there is no question that the combination of the new swipe system and in-plant parking has significantly reduced the time it takes employees to travel to and from their jobs. They no longer have to walk in from the remote lot to the clockhouse, wait for a bus, and remain on the bus while it stops at other work locations on company property. Instead, they drive in, park outside the BOF and walk a relatively short distance to the work station. The benefits are not limited to employees. In-plant parking has made it possible for the company to virtually eliminate the bus service which has produced substantial cost savings.

The elimination of the time cards, however, made it difficult for the company to control when employees entered and left the plant. Also contributing to the problems is the fact that, as it has down-sized, the

company has eliminated supervisory positions. Jim Bradley, section manager of steelmaking at no. 4 BOF, testified that at one time there were 12 supervisors per turn, plus a general foreman, an assistant general foreman, and other management officials.

Now, there are 4 turn supervisors, 3 day foremen and a maintenance supervisor. These individuals control a department that houses 5 acres under roof and multiple floors.

In order to exercise control over when employees enter and leave the plant, the company decided to use information available from the new swipe system. As noted, the computer automatically records the time an employee enters or leaves the plant. It is not sufficient, however, to merely expect an employee to "swipe-out" eight hours after he "swipes-in." That is, it takes employees some time to drive from the swipe-in station to the parking lot, additional time to walk from the lot to the work station, and perhaps more time to stop by the locker room and put on safety equipment. The same process must be completed in reverse at the end of the shift. Moreover, Bradley testified that many of the employees must brief their relief about operations before they can leave.

In order to actually be on the job eight hours, then, the company knows that an employee has to be on plant property for more than eight hours. No one can swipe-in, drive to the BOF, walk to his work station, work the required turn, walk back to his car, and then drive to the gate and swipe-out in eight hours. Some additional time must elapse in order for the employee to get to and from work. This case concerns the company's decision to add that additional time to the period during which an employee must be on company property.

Company exhibit 3 is a time study in which the company measured how long it takes an average employee to swipe-in, drive to the BOF and then walk from his car to his work station. Depending on where an employee worked within the BOF, the times ranged from a little over eight minutes to slightly more than 11 minutes. All times were measured, however, at non-peak hours, when the tester was not likely to encounter traffic, an unrealistic assumption for employees arriving at or leaving work during shift changes. In addition, the tests included no time for a trip to the locker room, putting on equipment, taking a shower, or briefing a relief. When the company took all of these factors into account it determined that an employee should spend a minimum of 12 minutes getting from the swipe station to the work station and vice versa. Once it had arrived at the 12 minute figure, the company notified employees that if they swiped in later than 12 minutes prior to their required starting time, the company would assume they were late and would dock their pay. Similarly, if they swiped out earlier than 12 minutes after the designated quitting time, the company would assume that they had left their work station early and would dock their pay. Under the company's new system, the swipe-in and swipe-out times are conclusive evidence that an employee was either tardy or quit early.

The company defends this procedure by arguing that 12 minutes is actually a conservative estimate of the time it should take an employee to enter or exit the plant. Under ideal conditions, it takes almost 6 minutes to travel between the swipe station and the BOF, but because the employees will come and go during shift change, they will not travel under ideal conditions. In addition, most of them will go to the locker room before work and will shower there after work. Many of them will have to brief their relief and all of them have to walk some distance between the car and the BOF. The company asserts that application of the 12 minute period is a fair way of insuring that employees actually remain on the job for the required 8 hours. Moreover, with the abolition of the time card system, it is the only way the company can enforce required working hours absent other monitoring devices (like a time clock) or increased supervision.

The union vigorously contests the company's right to determine how long an employee has spent on the job by application of the 12 minute test or, for that matter, by applying any such time test. At most, the union says, the time that elapses between the swipe station and the work station is merely evidence of whether an employee arrived late or left early; but it cannot be conclusive. The union offered evidence contesting the company's claim that 12 minutes is a fair estimate. It asserts that some employees can make the trip in far less time and that the company does not have the right to refuse to compensate them for time actually worked because of its unilateral determination of how long it should take an employee to make the trip. Similarly, the union asserts that, once an employee has worked eight hours and has left his work station, the company does not have the right to control his time. But, the union says, that is exactly what is happening because some employees are being forced to wait several minutes at the swipe station before they can swipe-out. The union does not question the company's ability to require employees to remain on the job for a full eight hours. But it claims that this requirement cannot be proven by assigning a time value to the travel time between swipe station and work station and punishing employees who fall outside its parameters.

## Discussion

This is not a case that can be resolved merely by applying standards of good faith or rationality. I have no doubt that the company acted in good faith and I think the system it hit on for controlling timely attendance is rational. But rationality must sometimes give way to existing contractual rights. There is no question that employees have a right to be paid for all hours worked.

Although the company refers to it as a minimum, twelve minutes is really an average of the time the company thinks an average employee would spend between gate and workplace, counting as the average an employee who does not necessarily exist. That is, the 12 minutes does not mean that over a particular time period it will take an employee on average 12 minutes each way per day. Rather, it means that, looking at the workforce as a whole, it will take an average of 12 minutes per employee for them to get out. <FN 2> The difficulty is that employees aren't paid according to how much the average employee in the bargaining unit works. Rather, they are paid according to how much each individual employee works. No matter what's going on in the rest of the unit, an individual employee who works eight hours is entitled to eight hours pay. If he works more or less than eight hours, he is entitled to be paid accordingly. The problem with the 12 minute system is that whether an employee is early or late cannot be determined on average. By its very nature, an average understates some employees and overstates others. The employer cannot refuse to pay an employee for time actually worked because, on average, it takes other BOF employees longer to get to the gate than it takes him.

Although the twelve minute period is unacceptable, the question is whether the company must install some system that monitors an employee's actual attendance or whether it can use information gained from the swipe system for the same purpose. The union's assertion is that the elapsed time from swipe station to job is never enough to establish that the employee was late. I disagree. Obviously, some time must elapse from the time an employee enters plant property until the time he arrives at the job site. Employees cannot swipe-in at the gate and simply appear in the BOF. They must drive there, park their cars, and walk to their work stations. Moreover, there is no question that this trip takes, at best, several minutes. I think the company is entitled to take account of this time lag in determining whether employees arrived and left on time.

Presumably, the company could establish a different time lag for different groups of employees, depending on where they worked. For example, Jim Bradley testified that an employee on the 6th floor of the BOF would take substantially longer to get to his car than an employee working in the scrap yard. The difficulty with the company's system is that it treats both of these employees the same, even though one can probably get out of the plant in under 12 minutes and one will probably take longer. I understand the company's desire to have a uniform rule, but if it is to do so, it must be one that does not disadvantage the employees by failing to pay them for time actually worked or by requiring that they remain on the property after their shift is over. If employees are to be treated uniformly, the company must choose a minimum, not an average, time. Otherwise, it risks docking employees who actually work eight hours.

For example, based on the time studies introduced at the hearing, I think it would be appropriate for the company to determine that any employee who swiped in later than 8 minutes before the hour was late to work and that an employee who swiped out earlier than 8 minutes after the hour left early. Eight minutes seems to be the minimum amount of time that can be applied uniformly without penalizing any employee. I do not mean to suggest that creation of a minimum, eight minutes or otherwise, would give employees a right to swipe-in or out at a particular time. The company has the right to require employees to work eight hours and employees would have no right to leave early so that they might arrive at the swipe station at 3:08. In my view, however, it is appropriate for the company to determine whether an employee worked his entire shift by using swipe times. It is highly unlikely that any employee who obeys the company's traffic regulations could travel between gate and work station in less than 8 minutes. <FN 3> An eight minute time limit, then, serves the employer's interest in controlling its workforce without sacrificing the employees' right to receive payment for their work. <FN 4>

Whether the company should adopt an eight minute system is not a decision the parties have asked me to make. They did, however, request that I provide guidance as to the standards that can properly be applied. My holding is limited to my conclusion that the company cannot apply a 12 minute average since it fails to account for the fact that some employees can enter or exit the plant in less time. It could, however, design a different system, including one that measured the time lag at eight minutes.

## AWARD

The dispute is resolved in accordance with the last paragraph of the opinion.

/s/ Terry A. Bethel

Terry A. Bethel  
November 11, 1993

<FN 1> There was testimony that some employees have elected to park in a remote lot inside plant gates and ride a shuttle bus because of dust created by a contractor's processes near the BOF. Apparently not many employees elect this option.

<FN 2> The twelve minute period might serve as an acceptable minimum if all employees were required to stop by the lockerroom on their way to work, or if all of them were required to shower after work. The evidence indicated, however, that some employees go directly from gate to workplace (and vice versa), avoiding the lockerroom entirely. Clearly, the minimum time required to exit the plant for at least some of these employees is less than twelve minutes. I view the twelve minute figure, then, as an estimate of the average time an employee would take to travel between gate and workplace, provided he stops in the lockerroom.

<FN 3> I disagree with the union's contention that it is improper for the company to take plant speed limits into account in determining the time it should take employees to drive from the gate to the work place. The company obviously has a significant interest in enforcing such speed limits, which are reasonably related to the safety of the employees. It should have a right to establish travel parameters that provide an incentive to drive no faster than the posted limits.

<FN 4> Although there was no testimony linking the 12 minute period to the payroll practice, I understood the testimony to mean that employees are paid in tenths of an hour, or in six minute increments. That may have influenced the company's decision to select 12 minutes as the appropriate time. The question of whether an employee is late or left early, however, is not necessarily the same as the amount the employee should be paid.