Award No. 880
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
December 7, 1993
OPINION AND AWARD
Introduction
This case concerns a dispute over whether company is obligated to replace certain maintenance employees who are on vacation or off sick. The case was tried in the company's offices on October 14, 1993. Jim Robinson represented the union and Pat Parker presented the company's case. Both sides filed prehearing briefs and submitted the case on final argument.
Appearances
For the company:
P. Parker -- Project Rep. Union Rel.
R. Sanger -- Maint. Mgr., ISBC
B. Smith -- Arb. Coord. Union Rel.
K. Kantowski -- Bus. Mgr. Mfg. Maint.
For the union:
J. Robinson -- Chr., Grievance Comm.
A. Jacque -- Vice Chr, Gr. Comm.
F. Boilek -- Witness
Background
In August, 1988, the parties entered into a mutual agreement creating the Shape Products Organization. As a part of that agreement, the parties negotiated certain job security provisions. Paragraph 19 applies to mechanics, among others, and reads, in relevant part, as follows:
19. The 117 employees of the mechanical sequence . . . will be guaranteed 40 hour work weeks, in accordance with the provisions of the collective bargaining agreement, except for [certain matters not relevant to this case.] . . . The minimum base force complement and recall provisions as provided in Appendix N . . . will not be applicable to the plant 4 maintenance sequences. . . .
The above understandings relative to plant 4 will apply to the remaining employees in No. 2 Blooming Mill Department after the shutdown of the 28" mill department and related facilities.
The parties agree that as of the time of this agreement, there were only 117 employees in the mechanical sequence, none of whom were laid off and all of whom were subject to the 40 hour guarantee.
Subsequently, on March 18, 1990, the parties entered into the agreement foreshadowed in the second quoted paragraph, above, of the Shapes Products Agreement. That mutual agreement concerns the "merger of the 10" mill maintenance sequences into the no. 2 blooming mill (21" mill) maintenance sequence." Paragraph 13 of that agreement reads as follows:
13. No. 2 Blooming Mill Maintenance employees and remaining 10" Mill Electrical Sequence Employees working in their respective craft sequences will be guaranteed a 40 hour work week except for operations, in the 2A/21" Mill, below five turns per week, or changed conditions caused by new technology other than that contemplated by the upgrade. Accordingly, the work force will not be reduced except by attrition or as otherwise provided in this paragraph.
A little more than a year following this agreement, the parties had a dispute concerning the number of employees protected by the guarantees of paragraph 13. The union contended that the number was 50 and argued that, pursuant to the last sentence of the paragraph, the number could drop below 50 only by attrition. Because there were employees laid off from the sequence, the union asserted that the company violated the mutual agreement when the work force dropped below 50. In addition, the union read the mutual agreement to mean that 50 employees had to be working in the sequence at any one time. Thus, the union asserted that when active employees were on sick leave or on vacation, the company was obliged to recall laid off workers to replace them.
Ultimately, this dispute was settled by a document known as the "Clarification of the Mutual Agreement . . . concerning Merger of the 10" Mill Maintenance Sequences Into the No. 2 Blooming Mill (21") Mill Maintenance Sequence." This agreement, referred to by the parties as the "clarification mutual," was

intended to clarify the obligations imposed by paragraph 13 of the mutual agreement of March 18, 1990, quoted above. The clarification mutual provided, in pertinent part, that "The company will maintain 44 mechanics from the seniority list per Attachment A . . . and guarantee scheduling a 40 hour work week . . . ." In addition, the agreement said "The minimum base force of mechanics will not be reduced except by attrition following the recall of all laid off 21" mill mechanics with sequential standing."

This clarification mutual, then, settled the dispute about the number of employees who were protected by the job security guarantees of paragraph 13 of the mutual agreement. It did not, however, resolve the union's claim that the number (agreed to in the clarification as 44) represented the work force that was to be actively working at any one time. Indeed, by letter agreement dated April 8, 1992, the parties agreed that the mutual agreement of March 18, 1990 "is not intended to prejudice the position of either party concerning the issue of recalling maintenance employees to fill temporary vacancies. That issue, still unresolved, centers around [the company's] alleged obligation to recall when the total number of maintenance employees scheduled is less than the base force complement."

It is that unresolved dispute that is the subject of this arbitration. The union contends that the company is obliged to recall employees who are laid off from the sequence whenever an active employee is off sick or on vacation. In his argument, Mr. Robinson made it clear that the union stakes no claim to unknown vacancies, at least in this arbitration. Such vacancies, the union asserts, are handled according to Article 10, Section 7 which gives the company several options, including modifying the work. The union asserts, however, that when an active employee is not to be scheduled because of vacation or illness, the company must recall a laid off employee in his place, thus assuring that 44 employees are actually scheduled to work.

Interestingly, while this dispute concerns an obligation to maintain a work force created by a specific mutual agreement, the parties agree that I have no right to resolve the dispute with reference to the language of that agreement itself. Thus, they read the letter agreement of April 8, 1992, quoted above, to mean that neither the mutual agreement nor the clarification of that agreement are relevant to a determination of this grievance. The parties agree that, while the mutual and the clarification mutual resolve certain issues between them, they did not address, and therefore did not resolve, the specific issue of this grievance. The resolution, then, must come from the original Shape Products Agreement and from the collective bargaining agreement.

Although both parties agree that I can consider the Shape Products Agreement, paragraph 19 of which is quoted above, they also agree that even that document does not address the specific matter at issue here. In the Shape Products Agreement, for example, there was no mention, and apparently no consideration, of the protections to be afforded laid off employees in the mechanical sequence, because there were no laid off employees. The job security protections for the 117 mechanical employees applied to all employees. There was a paragraph that said the "above understandings" would also apply to the employees now at issue in this arbitration, a matter that subsequently became the mutual agreement of March 18, 1990. But those "above understandings" could not have included an intention as to laid off workers since, as already stated, there were none among the mechanical sequence employees protected by the Shape Products Agreement.

The union pins its hopes on m.p. 13.88.8 of the collective bargaining agreement, which reads as follows:

Notwithstanding the provisions to the contrary in m.p. 13.88.7 above, an employee established in a craft sequence, shall be recalled to fill known vacancies in his sequence of at least one (1) week's duration.

The union asserts that the plain meaning of this provision requires that the company recall laid off mechanical sequence employees to replace employees who it knows will be off for periods of at last one week, such as those on sick leave or on vacation. The union contends that this provision is not merely a mechanism to get people on the schedule but, rather, that it has to do with how people are recalled to their sequence. M.p. 13.88.8, Robinson contended in final argument, is there to say that craft employees will be recalled to their sequence when there is a vacancy. And, Robinson urges, there is a vacancy in this case because the parties have agreed that 44 craftsman are to be protected.

Robinson -- and, for that matter, Parker as well -- argued that the real issue in the case is how to determine whether there is a vacancy. Once that determination is made, Robinson says, the plain language of 13.88.8 requires the recall of laid off craftsmen. Robinson conceded that the company has the right to determine how much maintenance work will be done and when it will be accomplished -- which obviously affects the number of employees who will be needed. Here, however, Robinson said there was "an external force" -- the-mutual agreement and its clarification agreement -- which sets the number of craftsmen who will be working at any one time. At base, then, Robinson argues that there is a vacancy because the mutual agreement established that 44 employees must be working at any one time.

The company, obviously, disagrees about the import of the number 44 and, equally important, questions the union's interpretation of 13.88.8. Parker pointed out that this section is part of Article 13, Section 17, which deals with seniority pools. In particular, m.p. 13.88.8 rests within paragraph c, which is headed "Operation of a Seniority Pool." Moreover, Parker points out that 13.88.8 is an exception to 13.88.7. Thus, one cannot understand the meaning of 13.88.8 until one reads and understands 13.88.7.

M.p. 13.88.7 provides that employees laid off from their parent department will not be recalled unless no one already working in the department is qualified and available for the work. However, sequentially established employees who are laid off are entitled to be recalled to fill vacancies of at least a week. If a sequentially established employee is displaced from his department but is working elsewhere in the plant, he need not be recalled for vacancies in his department unless a vacancy is for at least three weeks. Then comes 13.88.8 which says that, notwithstanding 13.88.7, employees established in craft sequences "shall" be recalled to fill vacancies in their sequence of at least a week.

Parker argues, then, that the purpose of 13.88.8 is to establish an exception to the way vacancies are filled under 13.88.7. Under that section, and without 13.88.8, the company would not have to recall a displaced (but not laid off) craft sequential employee for a vacancy of less than 3 weeks. This is the treatment permitted by 13.88.7. However, because of 13.88.8, craft employees only are excepted from 13.88.7 and they must be recalled for vacancies of at least a week, whether they have been laid off out of the plant or not.

This is the point at which Robinson argues that 13.88.8 must have been intended to do more than provide a mechanism to get employees on the schedule. It was, he argued, meant to give craft employees the right to return from layoff to fill vacancies in their sequences. The company, however, claims that 13.88.8 is there to prevent the company from using labor pool employees temporarily assigned to a craft department from filling vacancies in a craft sequence of more than one week's duration. It was not intended to force the company to recall a laid off employee every time an active employee was absent for more than a week.

The company urges that if 13.88.8 cannot be interpreted to support the union's claim, then there is no other provision the union can point to justify its case. It cannot use the wording of either the mutual agreement or the clarification mutual. It can use the Shape Products Agreement, but as explained above, that agreement did not address the matter at issue here.

Finally, the company urges that whatever the meaning of 13.88.8, it is inapplicable to this dispute because there is no vacancy. The company has the right to determine the amount of maintenance work it will do and, accordingly, the number of employees it will use. There cannot, then, be a vacancy merely because an otherwise active employee is absent. The company, pursuant to the first sentence of Article 10, section 7, will simply assign a force adequate for the work it plans to accomplish. <FN 1> Moreover, the company introduced evidence that it ordinarily plans its work force with the knowledge that some of the active employees will be absent for vacation or sickness. Thus, a mere absence, the company claims, does not establish that there is a vacancy.

Discussion

Because the parties' agreement forecloses me from considering the language of the mutual agreement or the clarification mutual, the union is left, basically, with 13.88.8 to prove its case. Despite Robinson's argument to the contrary, I am persuaded that this provision, appearing as it does in the seniority pool section, is not adequate to the task. I agree with Parker's claim that 13.88.8 has to be read in context and, when I do so, I fail to find there the independent source of right the union seeks. M.p. 13.88.8 is a limitation on the company's freedom. When there are laid off craft sequential employees, the company cannot fill craft vacancies as outlined in 13.88.7. Rather, it must use the laid off craft employees.

But this provision does not, of itself, specify when it will operate. That is, while it limits the company's ordinary method of operation spelled out in 13.88.7, and while it obviously provides protection for craft employees, it does not indicate what a vacancy is or when it will come into play. It does not by itself establish staffing levels or manning requirements independent of other sections of the agreement. It tells what and how, not when. Where then, does the union look for its authority that a vacancy is created when there is an absence of an active craft employee who is part of the force of 44 protected by the mutual agreement and the clarification?

The union's answer is that it looks to the mutual agreement and the clarification. As Robinson said in his final argument, the company has the right to determine how much maintenance work will be done and when it will be done, unless there is an external force. Here, the union sees the mutual and the clarification as an external force which requires 44 craft employees on site at all times.

The problem with this argument, however, is obvious. I am not permitted to use the wording of either the mutual agreement (which originally created the base force) or the clarification (which fixed the number protected at 44.) The parties agree that the words used in those documents do not address the question of whether the number 44 was intended to reflect a force that had to be actively engaged at any one time or simply the number of active employees (on leave or otherwise) who would be protected from layoff. Under what authority, then, can I determine that the number 44 meets one definition or the other? If I cannot use those agreements to resolve this question, then I am unable to conclude, as Robinson contends, that the mutual agreement is an "external force" which requires a set number of employees to be working at all times. <FN 2>

I have commented in other opinions about the pains and the pressures down-sizing have placed on both parties to this relationship. For its part, this local union has struggled mightily on behalf of laid off employees. That laudable concern, however, does not justify saddling 13.88.8 with a load it was not designed to carry. Accordingly, I will deny the grievance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

December 7, 1993

<FN 1> The company cited a number of cases, none of which strikes me as particularly relevant to this dispute. Most of them have to do with the right of the company to modify the work under Article 10, section 7. Because the union has limited its claim to situations in which there is a known vacancy or a known absence for a period of at least a week, the work modification rule in that section has no application to this case. One of the cases did cite the first sentence of Article 10, section 7 in support of the proposition that the company has the right to determine the amount of maintenance work to be done, but Robinson conceded that fact in his final argument.

<FN 2> By this statement, I do not mean to suggest that the union would prevail if I were permitted to examine the language of the agreement. Because that issue is not properly before me, I express no opinion about how the wording of the agreement could be interpreted.