Award No. 882
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
February 11, 1994
OPINION AND AWARD
Introduction
This case concerns the union's claim that the company violated Article 2, Section 2 and Article 13, Section 3 of the agreement when it assigned the grinding of rolls from the 76" and 100" mills away from the strip roll shop. The case was tried in the company's offices in East Chicago, Indiana on November 19, 1993. Pat Parker represented the company and Jim Robinson presented the union's case. Both parties filed post hearing briefs and reply briefs, which I received in late December.
Appearances
For the company:
P. Parker -- Sr. Rep., Union Relations
M. Javorek -- Sec. Mgr., Roll Shops
P. Rich -- Sr. Staff Eng., Mfg. Maint.
For the union:
J. Robinson -- Chrm., Gr. Comm.
M. Mezo -- President, Local 1010
A. Jacque -- 2nd Vice Chrm., Gr. Comm.
E. Neal -- Griever, Area 16
S. Jakima
R. Kiper
H. Former
J. Canchola
Background
This is another case that draws on the familiar principles articulated by Arbitrator McDermott in Inland Award 813. As the company reorganizes its operations, it sometimes combines tasks previously performed by two distinct seniority sequences into one. I have addressed that issue previously in such cases as Inland Award 835 and Inland Award 869. The issue in the instant case is similar, though there are certain differences. In some cases, like Inland Award 835, the company combines duties and eliminates a job. That is not what happened in this case. Rather, the company transferred away from employees in the Strip Roll Shop work that they had traditionally performed and replaced it with other work.
The work at issue involves the grinding of rolls from the 100" plate mill and the 76" hot strip mill. The union contends that, until 1991, the Strip Roll Shop was the primary entity responsible for the grinding of those rolls. The company does not deny that fact, though it asserts that other roll shops did the same work. In addition to 100" and 76" work, the Strip Roll Shop also regularly performed work on rolls from various other operations, all of which had been shut down by 1991. Moreover, work that was regularly performed by other roll shops was sometimes given to the Strip Roll Shop, either because the other shops could not accommodate it or because the Strip Roll Shop had excess capacity.
There is no dispute that, as the years have passed, the 100" and the 76" mills have become less significant parts of Inland's production operation. Both mills are old and neither is regarded as a core facility. Nevertheless, each mill produces work for the roll shop. That is, while the mills may operate less than they used to, they are still in production and they require the services that a roll shop provides. Moreover, the company does not argue in this case that the roll grinding work generated by the 100" and 76" mills is residual and minimal, a fact which, if proven, would give the company considerable discretion about how to assign the work. See Inland Award 813.
The company has six roll shops, four of which grind rolls, i.e., 4, 4a, 5 and the Strip Roll Shop, also known as the 1,2,3 roll shop. In 1991, the company upgraded some of the roll shops by adding new or rebuilt equipment. These improvements did not include the Strip Roll Shop. After the installation of the new equipment, the company transferred the grinding of 100" and 76" rolls to the 4 and/or 4a roll shop. It did not, however, close the Strip Roll Shop. Instead, it began using that facility to grind rolls that had

previously been contracted out, to take on overflow work from the other roll shops and, apparently, to grind some rolls not associated with Inland Steel.

The union does not contest the assignment of this work to the strip roll shop, at least in this case. It does, however, protest the company's decision to move the 100" and 76" work away from the strip roll shop and into the other roll shops. Relying on the principles of Inland Award 813, since applied in numerous other cases, the union claims that the employees in the strip roll shop had gained the exclusive right to perform this work.

Discussion

As I said in Inland Award 854, "The question . . . is whether the work claimed by the union is a recognizable body of work that has been performed with reasonable consistency and exclusivity." If the union satisfies this test, then the work cannot be transferred across seniority sequence lines (which is what the company did here) unless the company satisfies criteria that it does not assert in this case. Thus, the resolution of this arbitration depends on whether the work at issue is a recognizable body of work and whether the union has performed that work with reasonable consistency and exclusivity. Although separate issues, they are intertwined, at least in this case.

The company mounts two defenses. First, it says that the union cannot claim the seniority sequences in the strip roll shop ever performed the 100" and 76" work exclusively because the company had a practice of transferring the work to other roll shops from time to time. This, obviously, goes to the question of whether there was reasonable exclusivity. Second, and probably of more importance, the company asserts that it is improper to view the 76" and 100" grinding work as a separate and distinct body of work. Obviously, this goes to the question of whether the work claimed by the union in this case is a recognizable body of work, as that terminology has been used in Inland Award 813 and like cases. But it also has some impact on the exclusivity issue. The company argues that because all grinding work is essentially the same, the appropriate body of work is the work of roll grinding at the Harbor Works. If that is the appropriate body of work, then the union certainly could not establish exclusivity because it is undisputed that employees from other seniority sequences perform roll grinding work in the other roll shops.

There is no question about the fact that three other roll shops perform roll grinding work, that the employees in those shops belong to different seniority sequences, and that the work they do requires the same skills and abilities as that performed in the strip roll shop. The company elicited testimony -- even from union witnesses -- that when work is transferred between roll shops, the employees need no special training to perform it. Thus, when work ordinarily done in 4 or 4a goes to the strip roll shop, the employees there can perform it without difficulty. Similarly, when the company transferred the 100" and 76" work out of the strip roll shop the employees in 4 and 4a were able to do it without additional training.

Relying principally on these facts, the company points to my decision in Inland Award 835 and argues that, because the skill involved in roll grinding is the same no matter where the work is done, the work of grinding rolls -- not merely grinding rolls from the 76" and 100" mills -- is the appropriate body of work. Unquestionably, there is language in Award 835 which supports that argument. In that case, the company had normally assigned the work of roll build-up on segment 0's to department mechanics, while similar work on other segments was performed by shop services mechanics. The union grieved when the company departed from its usual pattern by assigning the segment 0 work to shop services. There, as here, the union claimed that the department employees had exclusively performed a recognizable body of work and that the company could not, therefore, assign it across seniority sequence lines.

In my opinion I questioned whether the union had actually established exclusivity, even if the appropriate body of work could be narrowly defined to include only segment 0 work. Ultimately, however, I resolved the case by determining that the appropriate body of work could not be confined to segment 0's, but instead must include all roll build-up work on the continuous caster:

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.

The company, obviously, focuses especially on the language about skills, and argues that, in this case, the skill required to grind rolls is the same, no matter where the work is done and no matter where the roll comes from. Thus, the company asserts, the relevant body of work is roll grinding, not merely the grinding of rolls from the 76" and 100" mills.

The instant case is not the first time this issue has arisen since I decided Inland Award 835. The company raised essentially the same argument in Inland Award 869. Although the company prevailed in that case (which I will discuss in more detail below), I also indicated that one could not determine the appropriate

body of work solely with reference to the skills involved, especially when the case involved position-rated employees, as is true here. In particular, as the above quote demonstrates, I was also influenced by the fact that the roll build-up work on the various segments was not only similar, but that it was all generated from "nearly identical segments of one production process." That same consideration played a role in my decision in Inland Award 872, in which I denied the union's claim that department mechanics had the exclusive right to change back-up rolls on operating turns at the 80" tandem mill. As the opinion discloses, my decision was influenced in part by the fact that non-craft employees performed nearly identical work on exactly the same equipment. Thus, not only were the skills a matter of importance, but so also was the fact that those skills were applied to the same equipment. <FN 1>

In Award 835 and in subsequent cases, then, I have observed that, in defining the relevant body of work, one must consider factors other than the skills the employees utilize. Obviously, the skills are a factor, but they are not the only matter of importance. In particular, in at least two cases (Awards 835 and 872), I have refused to segregate out a narrow slice of work when the same operation generates identical work which is performed by a different group of employees. But those are not the facts at issue here. The testimony established that, of all the rolls generated at the Harbor Works, the company consistently and with reasonable exclusivity assigned the 76" and 100" rolls to the strip roll shop. Although the other roll shops also ground rolls, they did receive work from the same process or production area that generated the strip roll shop's primary work.

The company also points to my opinion in Inland Award 869 as support for its defense to the union's claim. That case involved my rejection of the union's assertion that the company had violated Article 2, section 2 and Article 13, section 3 when it transferred testing of blast furnace samples away from the quality control center and to the lab at the no. 7 blast furnace. Number 7 blast furnace came on line in 1980. Prior to that time, all of the testing of blast furnace samples had been done at the quality control center by employees in the analytical control sequence. In order to cope with the substantial increase in samples created by the new furnace, and for other logistical reasons, the company created a lab near no. 7 blast furnace which tested all the samples taken from that furnace. That work was performed by employees of the CCI sequence. The grievance arose in 1991 after the company transferred the other blast furnace testing work from the quality control center to the no. 7 blast furnace lab.

There, the union contended that the company's action violated the sequential rights of employees in the analytical control sequence who, it asserted, had established the exclusive right to test all samples except those from no. 7 blast furnace. The company, however, pointed to the fact that the skills involved in testing were the same no matter where it was done and argued, as it does here, that the existence of similar work at the no. 7 blast furnace lab undermined the union's claim to exclusivity in the quality control center. In his reply brief in the instant case, Mr. Parker argued that I based my decision "on the simple fact that two different groups had been performing identical testing work, albeit from different blast furnaces, for over ten years." That is, Mr. Parker urges that my decision in Award 869 was premised on my belief that the existence of similar work in two different sequences excluded the possibility that either sequence could claim exclusivity. I disagree with that reading of my opinion.

Important to the resolution of Award 869, as the opinion there makes clear, is the fact that after the company created the new lab and transferred some work to the CCI sequence, the parties negotiated a mutual agreement which secured to the company the right to assign work. When the company subsequently assigned blast furnace testing from the quality control center to the no. 7 blast furnace lab, then, it was merely invoking a right it had already secured by agreement. In short, my opinion in Award 869 cannot fairly be read to stand for the proposition that a seniority sequence cannot establish exclusivity to certain work merely because another sequence performs similar work elsewhere.

As I recognized in Award 869, even the company does not seem to have advanced that theory consistently, despite its adherence to it in this case. Thus, in Award 836, the company did not question the union's claim of exclusivity, even though identical work was being performed by employees in two separate sequences. Similarly, the company did not dispute exclusivity in Inland Award 870, where two different sequences did almost exactly the same work in very similar facilities. In those cases, for whatever reason, the company had established a pattern of assignment that segregated certain work to one seniority sequence, despite the fact that other sequences were performing similar work and could have been assigned to the work in question. A similar situation exists here. It appears to be true that the company could have given the 76" and 100" grinding to any of four different roll shops. It did not, however, do that. Rather, the company segregated this work by giving it to the strip roll shop.

Although the company acknowledges that it saw the strip roll shop as the primary site for the 76" and 100" work, it denies that it ever assigned the work there exclusively. In fact, the company asserts that each of the roll shops works on rolls from various places in the mill. There is much truth to that claim. The company, for example, introduced a chart that showed the extent to which the strip roll shop had worked on rolls that are typically ground at another location. It did not, however, introduce any chart or other documentary evidence which indicated how often 76" and 100" mill rolls, which are principally ground in the strip roll shop, were ground at other locations. Rather, it relied on the testimony of Marion Javorek, the section manager of the roll shops. In response to my question, Javorek affirmed that the 76" and 100" rolls were done primarily at the strip roll shop with "some residual" work done at other shops.

In addition to this, the union offered the testimony of Steven Jakima, a roll grinder at the strip roll shop. He asserted that until the change which is the subject of this grievance, the company had always assigned the 76" and 100" rolls to the strip roll shop and that the rolls were not ground anywhere else. He testified that at one time or another he had seen the log book of every 76" and 100" roll and that none of them indicated the rolls had been ground elsewhere. This testimony was supported by Javier Canchola, a roll grinder in the number 4 roll shop who said that no 76" and 100" rolls have been ground there since 1968 or 1969, when the company first assigned the work to the strip roll shop.

The company questions whether Jakima could have seen every roll log book and whether he could remember the records, even if he had. Like others, I believe that memory is sometimes influenced by ideology. Nevertheless, I'm inclined to believe Jakima's testimony, at least to the extent of finding that very little, if any, 76" or 100" work was performed at the other roll shops. My conclusion here is not based solely on the testimony of the union witnesses. Even Javorek did not claim that the other roll shops ground many 76" or 100" rolls, using the word "residual" to describe the quantity. In addition, I am influenced by the fact that the company did not introduce documentary evidence to support its claim. I have observed before that documentary evidence is not always necessary to support a case. Testimony is evidence, too, and will often suffice. Here, however, the company introduced a table which indicates how often other rolls were sent to the strip roll shop. Why, then, did it not also introduce evidence about how often 76" and 100" rolls were sent to other roll shops, especially since Jakima testified that a log book existed which would contain that information?

In summary, I find that the company assigned the grinding of 76" and 100" rolls exclusively (or nearly so) to the strip roll shop. Moreover, I find that the union's claim of exclusivity is not defeated by the fact that other employees in other seniority sequences perform similar work elsewhere. I attribute no significance to the fact that strip roll shop employees also worked on rolls that were ground principally by other roll shops. The question is not whether the employees in the strip roll shop sometimes performed other work but whether they ground the 76" and 100" rolls with reasonable consistency and exclusivity. I am persuaded that they did.

Because I have concluded that the employees in the strip roll shop performed this recognizable body of work with reasonable consistency and exclusivity, I find that the union has carried its burden of proof. As is a familiar principle to these parties, a finding of exclusivity does not necessarily end the matter. The company is free to defend its action with other justifications. But those issues were not raised in this case. I do note that Javorek testified that the strip roll shop might need considerable capital investment if it is to remain in operation, a factor the company also mentions in its brief. As I understand this case, the parties have not committed to me the question of whether the company has the right to close the strip roll shop. Nor, despite some evidence about the facility's condition, has the company contended that the work at issue cannot be performed there. Accordingly, I offer no opinion about whether and under what circumstances the facility should continue to operate. The fact is that the strip roll shop was in operation when this work was transferred and has remained in operation since then. And, as the company concedes, it can accomplish the work at issue in this case. My opinion means merely that the company cannot continue to operate the facility and transfer away from the employees who work there a recognizable body of work that they have performed with reasonable consistency and exclusivity.

AWARD

The grievance is sustained. The company will assign the work accordingly and provide make-whole relief.

/s/ Terry A. Bethel

Terry A. Bethel

February 11, 1994

<FN 1> This is consistent with Arbitrator McDermott's opinion in Inland Award 823 and 824, relied on by the company. In that case, employees from different seniority sequences did not merely perform similar skills, but they did their work on exactly the same equipment.