

Award No. 884
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

Arbitrator: Terry A. Bethel

March 19, 1994

OPINION AND AWARD

Introduction

This case concerns the company's decision to eliminate the occupations in the plant recycle system and to transfer the remaining duties from that sequence to employees in other sequences. The case was tried in the company's offices in East Chicago, Indiana on November 18, 1993. Jim Robinson represented the union and Brad Smith presented the company's case. Both sides filed post hearing briefs and reply briefs.

Appearances

For the company:

B. Smith -- Arbitration Coordinator

M. Arnold -- Supervisor, Utilities Dept.

R. Bogusz -- Supervisor, Utilities Dept.

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

L. Anderson -- Manager, Utilities Dept.

For the union:

J. Robinson -- Chrm., Grievance Committee

A. Jacque -- 1st Vice Chrm, Grievance Comm.

M. Mezo -- President, Local 1010

W. Spencer -- Griever, Area 6, Utilities

M. Johnson -- Steward, Area 6, Utilities

C. Johnson

P. Turtle

M. Dietz

D. Leimer

S. Nicksic

Background

This case was tried on principles that have become familiar to these parties as the Inland Steel Company rationalizes facilities and automates processes, sometimes simultaneously reducing the labor complement. In this case, the union grieves the elimination of all of the occupations of the plant recycle sequence in the utilities department and the transfer of the remaining duties formerly performed by that sequence to employees in other sequences. To that extent, the contractual (though not necessarily the factual) issue here is nearly identical to that raised in Inland Award 870, in which the union grieved the company's decision to eliminate the pump house sequence in the utilities department. My description of the issue there is equally apt in this case:

[T]he 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. Its 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. . . .

This case actually results from four separate grievances, for the company did not eliminate all of the positions in the sequence at one time. All three occupations in the sequence continued to be scheduled on a twenty-one turn basis until late August, 1992. Effective with the week beginning August 23, 1992, the company eliminated the plant recycle operator. That same week, the company reduced the assistant recycle operator from 21 turns to 5 turns. Subsequently, the company eliminated the assistant recycle operator on

December 13, 1992, or about three and one-half months after the plant recycle operator was eliminated. One week later (effective the week of December 20, 1992), the company stopped scheduling the only remaining job in the sequence, the plant clarifier operator.

Although the company relies on a substantial diminution of duties to support these eliminations, it does not claim that there were no duties left that had been traditionally performed by the sequence. Nor, for that matter, does it assert that any one of the former occupations was entirely without duties. During the hearing, the company submitted a series of exhibits that indicated the duties traditionally performed by each of the three occupations and compared them to the work that was left after certain technological changes and the substantial reduction of operations. Company Exhibit 2, for example, indicates that computerization has automated most of the responsibilities traditionally performed by the plant clarifier operator. There were a few duties left (which the company describes as residual and inconsequential) that are now performed by employees of other sequences.

For example, one of the duties of the plant recycle operator was to change chlorine tanks at terminal treatment east. That work still exists and is currently being performed by the attendant utility driver (UAD). In addition, the UAD has taken over the duty of skimming the oil on the scalping tanks. The UADs did not, however, assume these tasks when the plant recycle operator was first eliminated in August, 1992. Rather, they were assigned to the assistant recycle operator, which was still working, albeit on a reduced schedule. One defense asserted by the company, then, to the grievance protesting the elimination of the plant recycle operator is that it did not assign the remaining duties of the occupation across seniority sequence lines but, rather, kept them within the same sequence by giving them to a different occupation. The work was not transferred across sequential lines until the assistant recycle operator was eliminated in December, 1992. This series of events is important, says the company, because its ability to eliminate the sequence and transfer the work depends on how much work was actually left in the sequence when the final job was eliminated in the week of December 20, 1992. By that time, both the recycle operator and assistant recycle operator were already gone, their remaining work having been transferred to the UADs. The only position left was the clarifier operator and, the company claims, his remaining duties were merely residual. There was no impediment, then, the company asserts, to eliminating that position and transferring those residual duties to the UADs.

By contrast, the union focuses on the chain of events in the aggregate. As Mr. Robinson says in his brief, "As the issue presented is the transfer of work out of the sequence we will discuss the work as it relates to the sequence as a whole and not occupation by occupation." Mr. Smith attacks that strategy in his reply brief. He asserts that the elimination of the sequence was planned to take place over a period of time ("purposely and gradually accomplished over a series of months by design") and that my focus must be on the increments and not the whole.

I do not find the company's argument to be persuasive. That is not to say that the principles for which it argues could never apply to a case of this sort. It may be that the gradual redistribution of work both inside and outside a sequence would make it appropriate to look only at how much work was left when the company made its last move, either not taking into account that work that was transferred previously or judging those transfers separately. But those are not the facts at issue. Here the company scheduled three occupations for 21 turns as late as the week that began August 16, 1992 and, just three months later, the entire sequence was gone.

Moreover, the union did not stand idly by and watch the company transfer work out of the sequence. It grieved the elimination of the plant recycle operator, the reduction and subsequent elimination of the assistant recycle operator and, finally, the elimination of the clarifier operator. It would not be accurate to claim, then, that the elimination of each of these positions does not affect the other. The union contested the right of the company to give recycle operator duties to the assistant recycle operator and then, in turn, contested its right to transfer those duties out of the sequence when the assistant recycle operator was eliminated.

This issue is, in fact, related to one I addressed in Inland Award 870, which was also concerned with the elimination of a sequence in the utilities department. In that case, the union grieved the elimination of both jobs in a two job sequence. I framed the issue as follows: "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."

This is the only issue the union tried in the instant case. While the grievances also raise additional issues, as Mr. Smith appropriately pointed out, the union confined its case to the issue alluded to by Mr. Robinson in

his brief -- whether it was appropriate for the company to eliminate the recycle sequence and assign its remaining duties to the UADs and other employees. If the union's factual allegations are proven, the case it mounted at the hearing would not necessarily compel a conclusion that none of the occupations in the recycle sequence could be eliminated. The factual issue in dispute, then, is the amount of work that actually remained in the sequence after the changes made by the company. Once that determination made, the question is whether the remaining amount is merely residual, thus justifying elimination of the sequence and transfer of the duties across sequential lines. It is to those issues that I now turn.

Discussion

Both parties introduced testimonial and documentary evidence concerning the amount of recycle sequence work that continues to be performed. Not surprisingly, the company sees the work as quite minimal and the union believes it is substantial. This is not merely a definitional dispute over the meaning of those terms. Rather, the estimates of the remaining work tendered by the respective parties vary widely. Although resolving this dispute involves crediting one side's testimony over the other, that does not necessarily mean that any of the witness lied. Rather, I am prepared to believe that each witness gave a good faith estimate of the amount of work available. Obviously, however, not all of the estimates can be correct.

There is no significant dispute with respect to some items. Both sides agree that the work of changing chlorine tanks, traditionally performed by recycle sequence employees, remains. In addition, they agree that this task takes, on average, about an hour a week to perform. In addition, they agree that someone still has to spend about an hour a week receiving deliveries, which apparently are largely chlorine. Similarly, both sides agree that it is still necessary to skim oil off the scalping tanks, a task that also takes limited time. Most of the dispute between the parties settles around four areas. Recycle sequence employees formerly performed "trips," which amounted to surveying an area of operation for problems, checking equipment, etc. This work is now done by the UADs, with the estimates varying widely about the amount of time involved. In addition, the UADs respond to alarms, which Arnold said are tripped by the computer when a condition is "outside parameters." It is fair to observe that most of the functions formerly performed by recycle sequence employees have been automated, with conditions now monitored or controlled by a computer. In some instances, the computer triggers an alarm, which must be responded to by an employee. Once there, the employee remedies the situation, much as the recycle sequence employees remedied it manually prior to automation. Again, the parties disagree about the number of alarms triggered for the UADs. The parties also dispute the amount of time spent in preventative maintenance. In this area, however, there is also a dispute about whether this was work that was formerly performed exclusively by recycle sequence employees. Finally, the parties disagree about the amount of time spent in clean-up activities.

Although the parties disagree about each of these activities, they also recognize that this case stands or falls on my findings with respect to trips and alarm response. I will, therefore, defer discussion of them until last.

Preventative Maintenance

The union estimates that employees from other sequences perform about 293 hours of maintenance work annually that was formerly done by recycle sequence employees. One of the most credible witnesses in the hearing was Dave Leiner, an auxiliary pump operator who has performed maintenance work formerly done by recycle sequence employees. The union asserts that certain preventative maintenance (PM) work is performed every six months, a contention denied by Arnold, who said the company has changed its PM schedule and lengthened the intervals considerably. Nevertheless, Leiner testified that he was involved in oil changes in April and then again in October, the month before the hearing. Clearly, this evidence supports the union's claim. That is, whatever the company's plan may be, I am not able to find that it has lengthened the PM intervals.

Also of importance was Leiner's testimony that he has performed PM work every month since April, which was apparently the date he returned to work as a result of Inland Award 870. He said that he and other employees are each assigned to a certain area, that he is furnished with sheets that tell him what needs to be done, and that he spends four to six hours a month on this activity. Other PM work has also been assigned to other employees.

The company also contends that, while recycle sequence employees performed PM work, it was not work that was exclusive to their sequence. Arnold said that department mechanics sometimes performed PM work, with assignments between them and recycle sequence employees made on a "who's available" basis. This testimony, however, was rebutted by union witnesses who testified that department mechanics did

repair work, but not PM, which was the job of recycle sequence employees. Mechanics would sometimes change the oil, they said, but only if that task was associated with the repair of a piece of equipment. Although the union's numbers may be slightly overstated, I'm inclined to believe that UADs and others now perform over 250 hours of PM work a year. This is work that was formerly done by recycle sequence employees. Moreover, I credit union testimony that the PM work was done by those employees with "reasonable exclusivity," the standard ordinarily applied in these cases. It seems clear to me that this work still exists and that the company has used UADs and auxiliary pump operators (who are not otherwise fully occupied) to do this work.

Lock Out

Union witnesses testified that part of the recycle employees' function was to lock out equipment before repair or servicing. They estimated that UADs now spend about six hours per week performing this task (two hours each in the three principal areas), with the time apparently spread over all three turns. Arnold acknowledged that this work occurs but questioned the union's time estimates. He did not, however, offer a time estimate of his own saying, credibly enough, that it was hard to speculate about since some of it depends on breakdowns. Frankly, I thought the union's evidence over-estimated the time spent on this function. About three or four hours a week seems more likely.

Clean-Up

The union estimates that employees spend about six hours a week on clean-up, again dividing the time between the three principal areas. The company questions how this work could still exist since there are no longer any employees regularly assigned to the work areas. Arnold did acknowledge that there have been some special clean-up efforts made around the mill which have encompassed his areas. This does not seem to be work that was an ordinary part of recycle sequence employee duties. Arnold also admitted that some clean-up work remains, even though employees are no longer there, since the equipment itself gets dirty or creates dirt. Nevertheless, he said he believes that six hours a week is high.

As with all other tasks, I can't know how long clean-up takes each week. However, I share Arnold's opinion that the union's estimate is high and that, save for special clean-up efforts like the one described above, employees do not spend more than two or three hours a week on this activity.

The Alarms

The union estimates that the UADs answer an average of three alarms per turn in each of twenty-one weekly turns in three different areas (Terminal Treatment East, 80" Clarifier, and Terminal Treatment West). The union estimates that each alarm takes an average of 15 minutes, thus accounting for its claim that the UADs devote about 48 hours (or more than two hours per turn) to alarm response each week. The company acknowledges that alarm response constitutes work that formerly belonged to the recycle sequence, but it claims that the union's estimates are too high. In fact, Arnold said that actual experience was only about one-third of what the union claimed. In support of this, the company introduced as an exhibit a computer report of all alarms experienced during the first twenty days of October, 1993. The report showed a total of 88 alarms over the 60 turns, but this number included alarms about empty chlorine tanks, the work for which has already been accounted for separately.

Union witnesses testified that the numbers on this exhibit are not consistent with their experience. Arnold conceded that there were more alarms in the months that followed the elimination than there are today. Some of that was due to initial problems with the equipment and some to the "learning curve" associated with the new process. He also acknowledged that there are occasional problems which result in frequent alarms. But there are also days when there are no alarms (except for the chlorine tanks.) Arnold said that the exhibit was consistent with the company's recent experience.

Although I believe there are times when there are more alarms than depicted on Company Exhibit 7, I'm inclined to credit Arnold's testimony that the numbers there are representative. I suspect the recollections of the union witnesses are influenced by the work they did shortly after the elimination, when there were more alarms, especially nuisance ones. The union's brief suggests several reasons why the computer print out of alarms may be inaccurate. It may, of course, be incorrect. It might also have been selected because it represents a time period when there were relatively few alarms. I find it significant, however, that the exhibit accounts for all of the days of a particular period (and not "randomly" selected days). Moreover, the period was one shortly before the hearing, which at least suggests that company officials did not search the records looking for the period of lowest activity.

In summary, I am persuaded that the company's estimate of alarm frequency is more accurate than the union's. Even using the union's time estimate of 15 minutes per alarm (which Arnold thinks is high), this

would mean there is only about 15 minutes of work per turn as a result of the alarms. There is more on some days, but there are also days when there are virtually no alarms.

The Trips

Although the above summary clearly indicates that work remains to be done, I cannot conclude that the company violated Article 2, Section 2 and Article 13, Section 3 merely by assigning this work to employees in other sequences. I have estimated that employees spend about 15 minutes per turn answering alarms, that they spend three or four hours a week on lock out, two or three hours a week on clean up, 10 minutes per turn changing chlorine tanks, and about five hours a week on PM. There was no testimony about when the PM work is done. In accounting for the other work, however, I must take into account that it occurs around the clock.

Employees clearly respond to alarms on each turn and are presumably responsible for lock-out on each turn. I cannot, then, merely add up the total hours and conclude that there is enough work to schedule one employee for one turn a day. Assuming that all of the above work is done throughout the operating schedule (as well as a few other miscellaneous tasks mentioned by the union at the hearing), on average there is only about an hour of work available per turn. The question of whether sufficient work remains, then, must depend on the time allotted to trips.

Union witnesses estimate that UAD's spend 21 hours a week making trips at Terminal Treatment East (formerly the responsibility of the recycle operator), 21 hours a week on trips at the 80" clarifier (formerly the work of the clarifier operator), 21 hours making trips at Terminal Treatment West (formerly the work of the assistant recycle operator), and 26.3 hours on trips in other areas. This amounts to a total of almost 90 hours a week, with part of the work occurring on each turn. In fact, the estimate of 21 hours a week for the principal areas listed above is based on a one hour trip in each area every turn during the week. In addition, the union claims that employees spend about seven hours a week on DAF monitoring. Although stated separately, the evidence indicated that this function is actually part of the trip.

Union witness Michael Johnson, a UAD, testified that after the recycle sequence employees were eliminated, the UADs were given a VOGD telling them to make a trip through each area each turn. Johnson described these as "hands on" inspections, with the UAD walking through the area, checking screens, monitoring equipment and climbing to the top of the cooling tower on each turn.

Company witness Arnold was nearly incredulous at the testimony of union witness that they climbed the cooling towers on each turn and spent almost 90 hours per week making trips. On direct examination Arnold testified that even before the assistant recycle operator was eliminated the company decided that the trips on the off-turns were unnecessary, so it cancelled them. The assistant operator was reduced to 5 turns per week and, accordingly, performed trips only on day turn. Arnold said this move was made because the computer monitoring and the alarm system made the trips unnecessary. After elimination of the assistant operator and the clarifier operator, Arnold said the trips were virtually eliminated. It is necessary, Arnold conceded, for someone to inspect the lagoon and the oil skimmers, a task which he said is nothing more than a "drive-by" that takes place in daylight hours.

On rebuttal, Arnold reiterated that when the recycle operator was eliminated and his remaining duties were assigned to the assistant operator, the assistant worked only five turns a week. Moreover, there was no testimony that UADs were making trips at this time. Thus, the company's evidence tends to show that no one made trips every turn prior to the complete elimination of the sequence, a fact that supports the company's argument that such trips are not expected each turn after the sequence was eliminated. Moreover, Arnold said he was not aware of any VOGD requiring daily turns. He testified that the UADs would not have time to complete a trip in each area on each turn, given the extent of their other duties. And, he said, even if they did make trips on each turn, they would take less time than the union estimates. Arnold acknowledged that he does not supervise the UADS and, therefore, has no direct knowledge of whether they actually make a trip through each area each day. The company did not call the UAD supervisor, who presumably would know what the UADs do on a daily basis or, at least, what they have been instructed to do.

Obviously, this is not an easy factual dispute to resolve. I wasn't in the mill between the elimination of the recycle sequence and the hearing and I have no knowledge of what happened. The people who were in the mill offer conflicting accounts of the UAD activities. I'm inclined to believe that there is some truth in each sides' version of events. Thus, I credit union testimony that trips were made on a regular basis after the elimination of the recycle sequence. Given the extent of the UADs' activities, I question whether the trips were made every day on every turn, but it seems clear that they occurred with more frequency than believed by Arnold. I also question whether the union's time estimate is accurate. For example, Arnold

testified with confidence that not every UAD climbed the cooling towers on every turn, an activity that would usually be unnecessary in the winter months in any event.

Even if I were to cut the union's time estimates in half, this would still amount to over forty hours of work a week, spread over 21 turns. That amount by itself would not be sufficient to take the work out of the "residual" category, though time devoted to trips is only one part of the equation. It would, however, put the average amount of work per turn at somewhere around three hours, an amount I found significant in Inland Award 870.

This case, however, is more difficult than merely adding up the hours the UADs have devoted to trips, were it even possible to do so with any accuracy. Arnold testified credibly that, whatever the UADs may have been doing, the company does not want them to do a trip through each area on each turn. Indeed, he testified that the alarm system was a substitute for the trips and that employees were expected to devote only inconsequential time to trips, like driving by the lagoon. The employees have done more than that, however. And, the fact that employees have performed certain work at the direction of supervisors (or, at least, with the knowledge of supervisors) is evidence that the work still exists and that the company wants it to be performed. Contrasted with this, however, is Arnold's testimony that he did not know what the employees were doing and that he does not want them to make the trips.

During the hearing, Mr. Smith argued vigorously that the company has a right to incur more risk. I understood that to mean that it was within the company's prerogative to reduce inspection and maintenance time in order to reduce cost, with the company obviously assuming the risk that less maintenance could lead to more equipment failure. I understand the alarm system to be part of this process. Thus, I credit Arnold's testimony that the company wants to substitute computer monitoring and alarm response for daily visual and hands-on inspection. I have some question about how efficiently the company inaugurated this scheme when it eliminated the recycle sequence, since it seems clear that UADs spent a significant amount of time making trips.

Arnold testified, however, that many of those trips were probably associated with alarm response. That is, UADs were called to an area as the result of an alarm (sometimes a nuisance alarm) and then made an inspection of the equipment while they were there. But there was also testimony about a VOGD that required employees to make such inspections.

There is no tidy resolution to this case. Nevertheless, the company tendered Arnold as its spokesman and I have to assume that his testimony accurately summarizes the company's intent with respect to the number of trips to be made by UADs. Although the UADs may have made more trips in the past than the company wanted, Arnold's testimony was credible and, I find, establishes that the company does not expect UADs to make trips through the areas formerly served by recycle sequence employees. <FN 1> Should those trips continue at the direction of management, then one would have to question Mr. Smith's argument that the company has assumed more risk by substituting alarm response for daily inspection. For purposes of this case, however, I am unable to find that the UADs are expected to spend a significant amount of time making trips through the recycle area. Although I agree with Mr. Robinson's argument that the amount of time spent by the UADs is indicative of the amount of work available, I conclude that the time spent here is not consistent with the company's desire to reduce inspection and incur more risk.

Summary

Article 2, Section 2 allows the company to change a local working condition as the result of changed circumstances. There is no difficulty finding changed circumstances here. Arnold's testimony detailed the functions formerly performed by recycle sequence employees that have now been lost to automation. His testimony established that the recycle sequence jobs simply no longer exist, with only fragments of their former functions remaining to be performed. As I understand those fragments, I cannot conclude that sufficient work remains to justify continuing to schedule the employees of the recycle sequence. <FN 2> The company's ability to capitalize on automation and its reorganization of the work in a more efficient manner is not cause for celebration by the union. I have recognized in numerous other opinions that claims of efficiency, by themselves, do not relieve the company from its obligations under the collective bargaining agreement, which does not serve only the interests of efficiency. Nevertheless, that does not mean that changed circumstances are irrelevant, especially when their importance is recognized in Article 2, Section 2, itself. In this case, the impact of automation and its resultant effects on the duties of the recycle sequence employees justified the company's action.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel
March 19, 1994

<FN 1> Arnold conceded, however, that there are about 10 hours per week of work associated with DAF monitoring.

<FN 2> The union's brief asserts that Arnold's testimony conceded that there is at least three hours work per turn. This is an overly optimistic interpretation of Arnold's testimony. He did offer estimates about how long trips would take, but he denied that employees made the trips on a daily basis, which the union nonetheless included in its calculation.