Award No. 885
IN THE MATcTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
April 22, 1994
OPINION AND AWARD
Introduction
This case concerns the union's claim that the company violated the agreement when, acting under the terms of a mutual agreement, the company slotted certain riggers as field fabricator starts and assigned them to perform field fabricator duties. The case was tried in the company's offices in East Chicago, Indiana on December 17, 1993 and January 20, 1994. Pat Parker represented the company and Bill Carey appeared on behalf of grievants and the union. Both sides filed pre-hearing briefs and submitted the case on final argument.
Appearances
For the company:
P. Parker -- Sen. Rep., Union Relations
W. Stallard -- Retired
W. Lukrafka -- Sec. Mgr., Mfg. Maintenance
B. Smith -- Arb. Coord., Union Relations
S. Nelson -- Proj. Rep., Union Relations
J. Castro -- Planner, Mfg. Maintenance
For the union:
B. Carey -- Griever, Area 19
J. Robinson -- Chrm., Grievance Comm.
P. King -- Chrm., Cont. Out Comm.
J. Schultz -- Asst. Griever, Area 19
K. McMahon
Greg Schafer
Vince Bedoy
Fred Zwoll
Joe Borja
Background
Although the parties spent considerable time trying the case, most of the essential facts are not in dispute. Nor are the facts particularly complex. Wayne Stallard, a former manager of material handling services, testified about certain difficulties he experienced in the field services department prior to 1986. In brief, the department had three crafts whose work was interrelated, but whose incumbent employees did not cross craft jurisdictional lines. Thus, a particular project might call for the services of riggers, welders, and boilermakers, part of whom, Stallard said, would "stand around" while the other crafts were performing their functions. The company wanted to achieve more efficiency by combining the crafts. In fact, Stallard said, the company wanted to eliminate the welders and riggers as single crafts.
Although the company was able to negotiate an agreement with the union, it did not succeed in eliminating the single crafts. Instead, on September 24, 1986, the parties entered into a mutual agreement that forms the basis of the dispute in this case. As set forth in the first paragraph of that agreement, the company created a new multiple-duty craft called field fabricator. The field fabricator performed the duties formerly performed by the separate crafts of rigger, welder and boilermaker. The incumbent boilermakers automatically became field fabricators and their old craft was discontinued. They entered the craft as field fabricator starts and, upon the completion of certain training, became field fabricator standards. If they failed to complete the training, they stayed as field fabricator starts.
Unlike the boilermakers, the welders and riggers had the choice of either transferring to the field fabricator occupation, or remaining in their traditional crafts. If they elected to transfer, they would take the appropriate training and become field fabricator standards. If they failed to complete the training, they would revert to their former occupation and sequence. This case concerns the field forces riggers, most of whom (about 50), elected to transfer to field fabricator. About a dozen riggers elected to remain as riggers.

In July of 1991, the company imposed a reduction in the field forces department. The dispute here is what should have happened to the field forces riggers who elected to remain as riggers.
The parties agree that the appropriate language is paragraph 15 of the mutual agreement:
Solely for the purposes of administering Article 13, Section 9 of the collective bargaining agreement, those welders and riggers listed in attachments 3 and 4 respectively, who were hired prior to 1967 who either elect to remain in their sequence or who elect to transfer to the field fabricator sequence but fail to satisfactorily complete the respective training programs, will be slotted as field fabricator starts in the event they are subject to being displaced from their sequences. They will, however, continue to receive their red circle rate of pay.
Reduced to its essence, the language reads as follows:
"Solely for the purposes of administering Article 13, Section 9. . ., those . . . riggers . . . who . . . elect to remain in their sequence . . . will be slotted as field fabricator starts in the event they are subject to being displaced from their sequences."
In July, 1991, when the senior riggers were "subject to being displaced from their sequence," the company "slotted [them] as field fabricator starts." Although the union raises a question as to whether the riggers should have been subject to displacement, it does not contest that, if they were subject to displacement, the company was obligated to slot them as field fabricator starts "for the purposes of administering Article 13, section 9." Rather, the dispute between the parties involves what it means to be "slotted" for that purpose. What the company did after it "slotted" the riggers as field fabricator starts is treat then as though they were, in fact, field fabricator starts. Thus, it gave them some additional training and then had them perform many of the duties normally performed by field fabricators which, of course, include rigging. On its face, the union filed this grievance on behalf of those riggers who, after being slotted as field fabricator starts, were required to perform other than rigging duties. The effect of the grievance, however, is somewhat broader than that since, when it slotted the riggers as field fabricator starts, the company also displaced some junior field fabricator starts. The union claims that the company should not have assigned the riggers to do field fabricator work and that, accordingly, no field fabricator should have been displaced.
The union reads paragraph 15 more narrowly than the company and advances several arguments in support of its position. As the union sees it, paragraph 15 does not entitle the company to assign riggers to do field fabricator work, whether they are "slotted" as field fabricators or not. Instead, the slotting of paragraph 15 is intended only to protect riggers from layoff, not increase or change the scope of their duties. The union says that during negotiations, it was worried that the creation of the new multiple craft could result in long-service riggers being laid off while junior field fabricators would continue to work. This was a problem, in part, because many of the field fabricators were former riggers who, had they remained riggers, would have been laid off ahead of the more senior riggers.
In response to this problem, the union says it negotiated paragraph 15 to insure that no rigger hired before 1967 could be laid off as long as field fabricators with less service continued to work. As the union sees it, the slotting of riggers is a paper exercise which is intended solely to determine when a rigger can be laid off. It is not a license to the company to assign riggers to perform other than rigging work. To the contrary, the union claims that riggers are only allowed to rig, a task that is consistent with the narrow definition of their craft.
This interpretation is supported by the testimony of union witness Phil King, who said that he would not have negotiated an agreement which required the riggers to do fabricator work. This testimony, however, conflicts with Stallard's, who testified that the parties understood riggers could be assigned fabricator work in the unlikely event they were designated for layoff.
The union also introduced testimony -- supported by company witnesses -- that the company had entered negotiations for the mutual agreement hoping to maintain a core of riggers while the new field fabricators were learning all the aspects of their trade. Apparently, these riggers would have been absorbed as field fabricators after the field fabricators gained enough rigging skills. The union, however, would not agree. Instead, the parties agreed that some employees could elect to remain as riggers permanently and those with sufficient service would have layoff protection under paragraph 15.
This evidence is important, the union says, for two reason. First, it is consistent with the union's claim that riggers were only to rig. Under the mutual, the long service riggers were not to be absorbed into another craft. In addition, the union asserts that if the company's position in this case is correct, the company will, in effect, have achieved what it was unable to negotiate. Thus, the company could not get the union to agree that some employees would remain as riggers and subsequently be absorbed as field fabricators. Yet, the union says, that is exactly what the company can now do, if its interpretation holds. All it has to do is

declare a shortage of rigging work and it is then free to slot the riggers as field fabricators and use them accordingly.

The union also introduced testimony that some supervisors had told the riggers that they would never be required to do anything but rigging work, regardless of the language in paragraph 15. This testimony was firmly denied by one of the two supervisors alleged to have made the comment and the company introduced an affidavit to like effect from the other, who has since retired.

Discussion

Although their testimony disagreed sharply, I have no question about the credibility of either King or Stallard. Both testified convincingly about their intent in negotiating paragraph 15 of the mutual agreement. If intent were all that mattered, one might question whether they ever reached agreement. But of course they did. They agreed to the language now contained in paragraph 15 of the mutual agreement. It is not uncommon for parties to attribute different meanings to contract language. Nor is it unusual for them to champion different causes, yet express their distinct designs with common language. Although it is routinely said that arbitrators interpret contracts to divine the parties' intentions, it is not always true that the parties shared a communal intent. It is enough that they chose common words. The arbitrator's task is to interpret those words.

The words at issue in this case are not ambiguous. Nor does the testimony of union witnesses convince me that I should attribute to them other than their plain meaning. Although they may have thought the eventuality unlikely, clearly the parties contemplated the possibility that riggers could be laid off. Paragraph 15 expressly contemplates that riggers might be "subject to being displaced from their sequence." In the ordinary case, they would either be laid or otherwise exercise rights to which their seniority might entitle them. The problem here is that a rigger might be designated for layoff while a less senior field fabricator continued to work. Again, in the ordinary case, it might not matter that a junior employee in a different sequence retains his job when a senior employee in another sequence is laid off. Here, however, the junior employee may formerly have been a rigger and it may be that he would continue to perform some rigging work, even while the rigger is laid off.

It is not hard to understand why the parties believed that a senior rigger should not be laid off while junior field fabricators -- who may formerly have been in the rigging sequence themselves -- would not be. The parties reasonably decided that the conversion of riggers into field fabricators would not improve the field fabricators' relative standing (at least as concerns the riggers) in the event of a lay off. It makes sense, then, to look to the relative seniority of fabricators who continue to work in order to determine whether a rigger will be laid off. I find nothing in paragraph 15 or in the facts, however, which convinces me that this is merely a paper transaction and that the riggers, having been slotted as field fabricators, are estopped from doing field fabricator work.

The union asserts that, had the parties intended to allow the riggers to work as field fabricators, they would have had to refer to more than Article 13 section 9 in the prefatory language. That section of the agreement deals with "force and crew reductions." The union contends that in order to achieve the meaning attributed to it by the company, paragraph 15 of the mutual agreement would have to refer also to Article 13, sections 3, 4, 6, and 9, as well as other provisions. Only in this fashion, the union claims, could the parties have upset the sequential rights of both riggers and field fabricators, and only in this fashion could it fill vacancies. The parties, however, agreed that the slotting of paragraph 15 would be "solely" for the purposes of administering Article 13, section 9. I must, the union argues, give the word "solely" its ordinary meaning.

I agree that the word "solely" is a significant part of paragraph 15, but I disagree with the union's contention that it prohibits the action taken in this case. Nor do I believe that the parties' decision to reference only Article 13, section 9 is fatal to the company's interpretation. I understand the union's argument that the failure to refer to a section of the contract in the mutual agreement creates a strong inference that the parties had no intention of affecting that portion of the agreement. There is, however, not real contention that riggers change sequences or that the slotting is the filling of a vacancy. Rather, I understand paragraph 15 to be an agreement that, should the riggers be designated for layoff, work will be made available to them in order to protect their status. To that extent, I find it significant that the work comes from a group composed partially of former riggers who, the parties decided, should not have gained a layoff preference as a result of their move from rigger to field fabricator.

Although not argued directly, at base the union contends that paragraph 15 is an acknowledgment that, in the event riggers are to be laid off, the company will keep more employees than it needs. Absent paragraph 15 of the mutual agreement, there is no question that the contract would allow the layoff of riggers and the

retention of junior field fabricators. For justifiable reasons, the parties decided to avoid that possibility. That does not mean, however, that the parties decided not to layoff anyone. To use the union's own argument, had that been their intent, it would have been easy enough to draft such language.

I read paragraph 15 to mean that, in order to protect long service employees, if the riggers are designated for layoff, the company will slot them among the field fabricators, some of whom used to be riggers and all of whom also do rigging work. The riggers will then work as though they were field fabricators for the duration of the period they would otherwise have been laid off. The contract cannot reasonably be read to mean that riggers will be maintained as riggers, even if there is insufficient rigging work to do. <FN 1> As recent events make clear, these parties know how to draft contract provisions that provide employment security, had that been their shared intention. Nothing in paragraph 15 indicates that it was.

I appreciate the difficulty the union has with this interpretation. Nevertheless, the union puts too much of a burden on the language of paragraph 15. It sees it not only as protection against layoff, but as a guarantee that the riggers will perform only certain kinds of work and, even further, as a limitation on the work the company can assign to the plant 1 riggers. Nothing contained in paragraph 15 indicates that its effect was to be that far-reaching. It understandably provides layoff protection to long service employees, but its language cannot be reasonably read to do more.

I need not consider at this juncture Mr. Carey's argument that the company's interpretation would effectively eliminate the rigger craft for which the union has negotiated protection. At this point, there is no reason to suspect that the company has arbitrarily manipulated assignments or otherwise acted in bad faith to undermine the riggers. There has been, in fact, only one brief period since 1986 in which the riggers have been slotted as field fabricators. This hardly demonstrates that the company has violated the parties' intention, manifested by the mutual agreement, to preserve the rigger craft.

Nor am I able to decide that the company's ability to act under the clear language of paragraph 15 has been limited by supervisors' comments. As noted earlier, the evidence on this matter is in conflict and I have some question about whether assurances were actually given. <FN 2> Even if comments were made, however, there was no proof that the low level supervisors who allegedly made them were involved in the negotiations or, for that matter, had even seen the language of paragraph 15. This latter fact is important, since the testimony indicated that paragraph 15 evolved from earlier company proposals to maintain a small force of riggers. Comments by people in the field, then, may have reflected mistaken beliefs about what had actually been negotiated. In any event, a foreman's misunderstanding of the mutual agreement cannot rebut the unambiguous language of the agreement.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

April 22, 1994

<FN 1> Nor, as the union argued, does it mean that the company has to shift rigging work from some other sequence -- like the plant 1 riggers -- in order to create work for the riggers.

<FN 2> I do not mean to suggest that the testimony about such conversations was false. I have no doubt that the employees who testified talked about this problem with their supervisors. Moreover, the employees may have taken assurance from comments the supervisors made. I find it unlikely, however, that the supervisors could have spoken knowledgeably about the meaning of the mutual agreement and that the employees could reasonably have relied on their comments.