Award No. 891
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
May 10, 1994
OPINION AND AWARD
Introduction
This case concerns the union's claim that the company violated the contract when it refused to allow certain employees of 4 BOF to change their scheduled vacations to coincide with an unanticipated period of layoff. The case was tried in the company's offices in East Chicago, Indiana on April 15, 1994. Brad Smith represented the company and Jim Robinson presented the union's case. Both sides filed pre-hearing briefs and submitted the case on final argument.
Appearances
For the company:
B. Smith -- Arb. Coord., Union Relations
T. Kinach -- Coord., Union Relations
V. Soto -- Hum. Rel. Gen., 4 BOF/CC
For the union:
J. Robinson -- Staff Rep., District 31, USWA
M. Mezo -- President, Local 1010
A. Jacque -- Chrm., Grievance Committee
J. O'Donahue -- Griever, Area 4
D. Crum
D. Hinkle
P. Lugo
J. Strauch
Background
The facts are not in dispute. Each of the grievants had scheduled a vacation for 1992 in accordance with the procedures specified by the contract. In late summer, no. 7 blast furnace went down unexpectedly, which significantly reduced the operations in the BOF. In response the company laid off several employees for one week. Some of those who had not yet taken their vacation sought to change it to the period of layoff in order to protect their earnings. The company, however, refused their request, thereby prompting this grievance.
Each side relies on a different provision of the vacation article, with each clause unambiguously supporting the position of the party who cites it. The union points to m.p. 12.21, which rests in the subsection headed "Regular Vacations" and reads as follows:
The vacation period shall begin January 1 and shall end the following December 31. All vacations must be taken before the end of the vacation period, except that the last week of a vacation may include the balance of the week in which December 31 falls. An eligible employee who is laid off shall have the right to designate a portion of his layoff period equivalent to his vacation period as his vacation period.
Obviously, the union finds support for its position in the last sentence of this section, which it claims gives employees an absolute right to move their vacations to cover a lay off.
The company relies on language that is equally compelling. Thus, m.p. 12.20 which is found in the "General" subsection of the vacation scheduling provision, reads as follows:
If an employee is on layoff from the plant at any time before the beginning of his scheduled vacation hereunder, he may request to have his vacation start at any time during such layoff and, if management agrees to grant his request, it shall have the right to set the appropriate conditions under which it grants his request.
As the language makes obvious, this section makes discretionary what m.p. 12.21 appears to make absolute. It is the conflict between these two contract provisions which the parties ask me to resolve in this case.
Discussion

The union claims that the matter may be easily settled by looking to the history of how each clause came to be included in the agreement. What is now "Section 6. Scheduling of Vacations," in which each of these clauses now appears, was first included in the agreement in 1947, though none of the disputed language was in that agreement. What is now 12.21, on which the union relies, came into the contract in 1952. The language was still in the first paragraph of section 6 in the 1962 contract (as amended in 1963.) In addition, what is now 12.20 made its first appearance in 1963 agreement, though it was housed in the section controlling extended vacations and applied only to them. In 1965, the vacation article took on what is essentially the form it holds today.

In 1965, section 6 was divided into subsections, the first three of which are relevant to this case. The first subsection was headed "General" and included, among other things, what is now m.p. 12.20. This language had been moved from subsection c., where it had applied only to extended vacations, to the "General" subsection. The second subsection, "b. Regular Vacations," contained what is now 12.21. The third subsection ("c.") applied to extended vacations.

The union argues that in 1965, 12.20 was a general provision that was superseded for regular vacations by what is now 12.21. That latter language, which appeared only in the Inland agreement, signaled that, whatever the general rules might be, employees had an absolute right to move regular vacations to cover layoffs. There was no corollary to be found in the extended vacation subsection, so the union argues that they were controlled by the general provision of m.p. 12.20. But m.p. 12.20 was never intended to apply to regular vacations, the union argues. This reading, the union says, explains the apparent conflict between the clauses and gives meaning to all the provisions of the agreement.

This is a careful historical argument. I agree with Mr. Robinson's argument that the meaning of contract provisions can often be gleaned from a review of their history. But his argument is hardly compelling. In essence, Robinson argues that 12.20 was put in the "general" subsection so that it would apply only to extended vacations, with 12.21 superseding it for regular vacations. But this ignores the fact that 12.20 was originally in the extended vacation section. Why would the parties take it out and put it in the general subsection if it was to apply only to extended vacations? It seems more likely that they would have left it where it was. <FN 1>

Even if I were to credit this argument as it applied to the 1965 contract, it would be harder to accept it for the current agreement. The current contract no longer includes a provision allowing for extended vacations. Thus, although the parties have maintained essentially the same structure, it is no longer possible to see the provisions of subsection a. as applying generally to both regular and extended vacations, with specific language in either one overriding the general. Now there are only regular vacations. Everything in subsection a. has to apply to regular vacations, or it would mean nothing at all. In essence, that is the union's argument. That is, the union sees 12.20 as a provision that was to limit the rescheduling of extended vacations only and, since they are no longer in the agreement, 12.20 no longer has any application.

This argument, however, would force me to read 12.20 out of the agreement entirely, since it would no longer have any application to anything. I cannot assume that the parties included a meaningless provision in the agreement, especially when they deliberately moved it out of a limited role to a broader one.

Alternatively, the union argues that, even ignoring the history, 12.20 and 12.21 can be read harmoniously. The starting point here is 12.19, which says that, when vacations are being scheduled, the company will notify employees who are laid off <FN 2> of the time allotted to their vacation, subject to the employees' right to request some other period. M.p. 12.20 then says that if an active employee is "on layoff" -- which the union means to mean already out of the plant -- before his scheduled vacation rolls around, he can request that it be rescheduled to cover all or part of the layoff. M.p. 12.21 applies, the union says, when an employee "is laid off," which the union reads differently from the terminology "on layoff" in 12.20. As noted, "on layoff" means that the employee is already gone from the plant. The union claims that "is laid off" refers to the time an employee is being laid off.

Although this is a creative attempt to read all of the contract's language as meaningful, I cannot accept it. What sense does it make to say that an employee has an absolute right to reschedule his vacation as he walks out the door on a layoff, but then say that, once he gets home (or, maybe, just to the parking lot), the rescheduling becomes discretionary?

The company proffers a different interpretation. It reads 12.21 to mean that when an employees is "laid off" (that is, already out the door) when vacations are being scheduled, the employee will have an absolute right to schedule his vacation during the layoff period. However, when the vacations are already scheduled, 12.20 applies. This construction of 12.20 is easily justifiable from the paragraph's language, which speaks of requesting a change in a "scheduled" vacation. The argument is not so powerful for 12.21. If that section

meant that a laid off employee could always schedule his vacation during a layoff period, then it would seem to conflict with 12.19. That section does allow a laid off employee to request a certain time as vacation, but it does not give him an absolute right to his request. Rather, it says that the request will be considered under 12.18, which gives the company discretion as to how many employees can be off at any one time.

The fact is that none of the interpretations offered by the parties suffice to accommodate 12.20 and 12.21. In my view, these two provisions simply contradict each other. No rational reading can make sense of them both. This is not an enviable position for an arbitrator to be in. No matter what he does, the losing party can point to express language that supports its position. Nevertheless, it is my obligation to impart a meaning to these provisions. I cannot simply decide that the parties never agreed, because there is, in fact, a contract.

I find that this dispute is controlled by the language of 12.20. As noted in the review of the history, 12.21 came into the contract first. Whatever it was intended to mean, the parties were surely aware of it when they negotiated 12.20, and especially when they decided that 12.20 should apply to more than extended vacations. I am particularly influenced by 12.20's reference to scheduled vacations, which seems directed to a specific situation. This is not, as the union urges, a general provision. If anything, 12.21 could more aptly be described as general since it is not clear exactly what situation it was intended to apply to. That is, 12.19 clearly applies when a vacation has not yet been scheduled and 12.20 clearly applies when it has. I am unable to divine any particular application for 12.21 except, perhaps, as a general reference to the procedure outlines in 12.20. <FN 3>

This resolution is also consistent with the general contract provision that allows the company to determine the number of employees who will be off on vacation at any one time. Presumably, the primary reason for that provision is to insure that the company will have sufficient forces to continue operations. But the company is also entitled to consider the financial impact of having numerous employees move their vacation to the same time period. To that extent, I do not find damning the union's argument that the company was motivated principally by cash flow considerations.

I realize that this resolution will be no more satisfying to the union than a contrary result would be to the company. Nevertheless, one clause must control and, for the reasons outlined above, I hold that it is 12.20.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

May 10, 1994

<FN 1> The union's answer, no doubt, is that the movement of 12.20 to the "general" subsection was a function of coordinated bargaining, with 12.21 in the "regular vacation" subsection applying only to Inland. But this argument defeats itself. If 12.21 demonstrates that the Inland negotiators were capable of tailoring the vacation article to their own needs, then presumably they could have done so with 12.20 as well.

<FN 2> This paragraph also applies to employees on leave of absence or disability.

<FN 3> The union introduced evidence of a prior grievance settlement concerning a similar occurrence. I cannot find it to be controlling, however, because it is not clear to me that the vacations in that case had been scheduled at the time the employees made their request.