IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
And

Award No. 908

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This is a difficult dispute which concerns the union's claim for sixth and seventh day overtime for certain field forces employees. The case was tried in the company's offices in East Chicago, Indiana on September 14, 1995. Brad Smith represented the company and Jim Robinson presented the case for the union. The parties filed post-hearing briefs which I received in February, 1996.

Appearances

For the company:
B. Smith Arb. Coordinator, Union Rel.
T. Laird Human Resc. Gen., ISIP
R. Vela Sen Staff HRG, MM
For the union:
J. Robinson Staff Rep., USWA
M. Mezo President Local 1010
A. Jacque Grievance Chair, Local 1010
L. McMahon Griever
J. Schultz Ass't. Griever
M. Florey Steward
T. Allen Steward
B. Carey Steward

Background

The facts are complicated. Prior to 1993, the company had no discretion to schedule field forces employees other than Monday through Friday. Although weekend work was apparently relatively common, it was strictly voluntary and was, obviously, compensated for at overtime rates. This was the consequence of a portion on Appendix C, known as AC.6: "The practices with respect to the scheduling of Field Forces Department during the last year shall be continued in effect for the duration of this agreement, subject to change by mutual agreement." The parties understood this language to protect the historic Monday through Friday scheduling in field forces.

This was not a happy situation for the company, which wanted the ability to insure that it could have maintenance employees available on weekends. Although its concern spanned many years, the company was not able to bargain a change until 1993. In that year, the parties agreed to what is known as the Mega-Maintenance Agreement, relevant portions of which are set out below:

Within IRMC AC.6 scheduling practices for the Wireman, Fabricator, and Machinist sequences are modified as follows:

All employees shall be available for twenty-one (21) turn scheduling as defined below.

Each sequence shall be divided into two (2) equal groups, A & B, at management discretion....

The A group will be up to bat for the months of January, March, May, July, September and November, while the B group will be at bat [the other 6 months].

When Tuesday-Saturday or Sunday-Thursday schedules are required the group at bat shall be scheduled first. After the first group is scheduled, the group on deck may be scheduled.

....

The parties have had some disagreement concerning the meaning of this language, though they now agree that it gives the company only three scheduling options for field forces employees: Sunday through Thursday, Monday through Friday, and Tuesday through Saturday. Thus, although the company lacks the ability to schedule field forces employees for the normal work pattern recognized in Article 10, it has more flexibility than it had before 1993. It could insure weekend coverage by scheduling employees on Tuesday through Saturday or Sunday through Thursday, or both. Indeed, it was exactly that scheduling pattern that led to the dispute in this case.

The relevant work week or payroll week runs from Sunday through Saturday. There is no doubt that the company can schedule field forces employees from Tuesday through Saturday. The problem occurs when it

also wants field forces employees to work on Sunday. There is no question that, when the company wants Saturday coverage, it has to first assign the at bat group to that work, presumably by giving the number of employees it needs a Tuesday though Saturday schedule. If it schedules everyone in the sequence and it still needs people on Saturday, then it may schedule the on deck group.

Suppose, however, the company knows that work will be required on both Saturday and Sunday and suppose it schedules all of the at bat group to work on Saturday. One issue here is how it should handle Sunday. The company, noting that a new work week starts on Sunday, says that it must first schedule the at bat group because of the mega maintenance language that says "When Tuesday-Saturday or Sunday-Thursday schedules are required the group at bat shall be scheduled first." The company reasons that its obligation to schedule at bat sequences first applies by work week. Thus, it schedules the at bat employees Tuesday through Saturday in week one and Sunday through Thursday in week two. The problem this creates is in overtime.

When field forces employees are scheduled under the pattern just discussed, they obviously work for ten consecutive days, albeit in two different payroll weeks. The fact that the days are spread equally over two different payroll weeks, however, does not by itself mean that the company avoids overtime payments. The relevant overtime language from Article 11, mp 11.9, reads as follows:

Section 3.a. Overtime ... shall be paid for:

...

(4) Hours worked on the sixth or seventh workday of a 7-consecutive day period during which the first five (5) days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as provided for in Subsection "d" of Article 10--Hours of Work...." (emphasis added) ... For purposes of this section 3-a-(4) all working schedules now normally used in any department of the plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days' prior written notice thereof to the company.

There is no doubt that the underlined language is of great significance to this case.

The company asserts that when it needs coverage over the entire weekend, it schedules the at bat employees for ten consecutive days because that is the only option it has. It must schedule at bat employees first and the fact that the weekend is intersected by the change in payroll weeks means that it has to consider Saturday and Sunday in two separate assignments. This obligation to schedule in two different payroll weeks, the company says, was placed on it pursuant to the parties' mega maintenance agreement. The company says that restrictions placed on it by that agreement forbid it from scheduling an employee on both Saturday and Sunday unless he is scheduled for ten consecutive days. Thus, the company claims the protection of the underscored exception above. That is, it says it need not pay sixth and seventh day overtime because the hours at issue are "worked pursuant to schedules mutually agreed to" under the relevant language of the contract.

The union, obviously, disagrees with this interpretation. Its disagreement is premised on two different arguments. First, the union says that the company interpretation of the mega maintenance agreement is flawed. According to the union, when the company knows that it will need employees on both Saturday and Sunday, the mega maintenance agreement does not require that the at bat employees be scheduled on both days. Rather than look at the scheduling requirements in work weeks or payroll weeks as the company does, the union says it is appropriate to view the problem by looking at the weekend as a unit. Thus, the union says that if all at bat employees are scheduled Tuesday through Saturday, then the at bat employees have been "exhausted," meaning that they have had their weekend scheduling. At that point it is appropriate to schedule the on deck employees for the weekend. But that means that they cannot only be scheduled for any remaining work on Saturday; they may also be scheduled for the Sunday work. In short, the union says that the mega maintenance agreement means that once the at bat employees have been scheduled Tuesday through Saturday, the on deck employees can be scheduled Sunday through Thursday.

The union's second argument does not depend on this interpretation. Even if the company is required to schedule the at bat employees for ten days (which the union does not concede) the union argues that the company is still required to pay sixth and seventh day overtime. It says that the mere fact that schedules are worked by mutual agreement is not enough. Rather, the exception language in mp 11.9 says that overtime payments are due except when the sixth and seventh days are worked pursuant to schedules that are mutually agreed to "as provided in Subsection "d" of section 1 of Article 10...." That language, mp 10.5 reads as follows:

All employees shall be scheduled on the basis of the normal work pattern except where: ... (c) schedules deviating from the normal work pattern are established by agreement between the company and the grievance committeeman of the department involved.

Although the union does not necessarily deny that he company is required to schedule the at bat employees for ten consecutive days (assuming the company's interpretation of the mega maintenance agreement is correct) it says that the mega maintenance agreement is not a mutual agreement of the kind specified in mp 10.5. As such, the exception language of mp 11.9 does not apply and the company is obligated to pay six and seven day overtime.

The Mega Maintenance Interpretation

Although I have described the company's actions which are at issue in this case in the present tense, the parties have reached agreement on how some language should be interpreted. For example, though the company asserts that its work week or payroll week interpretation of the mega maintenance agreement is correct, it has agreed with the union that it will schedule (and it now is scheduling) according to the union's so-called weekend interpretation. Thus, if all of the at bat employees are scheduled from Tuesday through Saturday, the company does not then schedule the same group from Sunday through Thursday; rather, the on deck employees are given that schedule.

Because the parties have now agreed about how they will interpret this language, I need not spend an extended time discussing which interpretation was correct at the time this dispute arose. My initial impression from the language favored the company's interpretation and, after numerous rereadings of both the language and the parties' briefs, that impression has not changed. Thus, I understand the clause from the mega maintenance agreement which begins "When Tuesday-Saturday or Sunday-Thursday schedules are required..." to mean that the at bat group is to be scheduled no matter whether employees are scheduled Tuesday through Saturday, Sunday through Thursday or both.

This interpretation is consistent with the company's practice of scheduling by calendar weeks. Nothing in the mega maintenance agreement suggests that that pattern is to be disturbed. Moreover, while there was not a great amount of testimony about it, this interpretation also seems consistent with the purpose of dividing maintenance employees into groups and designating them as at bat or on deck in various months. As I understand it, one reason for the distinction is so that employees can have some reasonable expectation of the months when they can expect weekend work. These employees, after all, were moving from a system in which weekend work was voluntary to one in which it could be required. In such circumstances, it seems likely that employees would want to protect certain times when they could reasonably expect to be off. The at-bat, on-deck system facilitated that sort of planning. Under the union's interpretation, however, on deck employees would seemingly stand a higher chance of weekend work.

That is not to suggest that the union's interpretation is irrational or that employees might not prefer it because it could lessen the chance that they would have to work both days on the weekend. Indeed, the fact that the parties have now opted to work in this fashion attests to the reasonableness of the union's claim. Obviously, there is no clear answer to this problem. In my view, however, the disputed language seems to require that at bat employees be used on both Saturday and Sunday before on deck employees are vulnerable for assignment. Thus, I am unable to credit the union's contention that it should prevail because the company misinterpreted the mega maintenance agreement.

The Mutual Agreement Issue

The principal issue in this case is whether the mega maintenance agreement which, as I have read it, requires the company to schedule the at-bat employees for ten consecutive days in order to cover Saturday and Sunday, is a mutual agreement within the exception language of mp 11.9. That is, is it the kind of mutually agreed to schedule "provided for in Subsection "d" of Section 1 of Article 10--Hours of Work"? There is no doubt that the mega maintenance agreement is a mutual agreement and, as I have read it, there is no doubt that it limits the company to certain work schedules. The company says that is all that is required. But the union has other arguments.

First, and most obviously, the union points to the reference to Article 10, section 1(d). The relevant language cited by both parties -- and quoted above -- requires that the employees be scheduled according to normal work patterns except where other schedules are "established by agreement between the company and the grievance committeeman of the department involved." There is, the union points out, no such agreement here. The mega maintenance agreement is, certainly, mutually agreed to by the company and the union, but that is not the kind of document contemplated by mp 10.5 Rather, it envisions an agreement by the company and the department grievance committeeman. In short, it contemplates a local agreement at variance with the normal work schedules negotiated by the company and the union.

The union points out that the mega maintenance agreement is merely an amendment to AC6 which, for many years, precluded the company from scheduling field forces employees to work on weekends. After 1993, the company is still restricted in the way it can schedule such employees, though not as much as before. After 1993, the company gained two more options; it could schedule Monday through Friday, as always, and it gained the right to schedule Tuesday through Saturday and Sunday through Saturday. But it did not gain the right to schedule on a 21 turn basis, which would have given it free rein to schedule weekends as it saw fit, without the need for overtime. As the union says, under the amended scheduling rights negotiated in 1993, the company is permitted to schedule field forces employees on weekends, but it does not have to do so. The fact that it may incur overtime if it schedules the same group for two weekend days is not a significant change, the union urges. After all, the company always had to pay overtime to field forces in the past when they worked weekends. And now, it has the added benefit of being able to schedule employees, rather than depending on volunteers, which was the case prior to 1993.

The point, the union says, is that whatever the company is allowed to do under the mega maintenance agreement, its rights don't exist because of an agreement between it and the department steward. This may be a local agreement, but it's one pursuant to mp 10.7, not 10.5 and, as such, does not qualify as an exception under mp 11.9.

Discussion

One of the things that makes this case difficult is the retention in the agreement of AC6, which protects scheduling practices in the maintenance department. There is no doubt that AC6 restricted the company to Monday through Friday scheduling though, as I recognized in Inland Award 843, its function was not limited to that practice. Nevertheless, the retention in the agreement of language that was clearly intended to protect a restrictive scheduling practice adds some credence to the company's claim that the 1993 mega maintenance agreement was the kind of agreement envisioned by mp 11.9 and mp 10.5; that is, the mega maintenance agreement was an agreement to deviate from the normal work pattern that had been established by AC6.

The problem with this argument, however, is the mega maintenance agreement itself. That agreement does not establish a deviation from what is maintained as a normal scheduling practice; rather, it expressly modifies what AC6 is intended to mean. Thus, prior to 1993, AC6 was understood to mean that the company could schedule maintenance forces only Monday through Friday. But that interpretation was abandoned after the 1993 negotiations and AC6 was then understood to mean that management had other scheduling options. I find this important because of the wording of mp 10.5. As noted, that section protects the company from paying sixth and seventh day overtime when schedules deviate from the normal work pattern because of agreement between the company and the departmental grievance committeeman. The company says that requirement is satisfied here because Bill Carey was the department committeeman and he was party to the negotiations that produced the mega maintenance agreement and, in fact, signed it (as well as the 1993 agreement itself). But mp 10.5 seems to contemplate a different kind of agreement.

Mp 10.3 and mp 10.4 define "normal work pattern" as five consecutive days in any seven consecutive day period. Moreover, schedules of more than five consecutive days are still considered to be part of this pattern. Under this definition, the schedule established by the mega maintenance agreement does not necessarily deviate from the "normal work pattern," even though it may have changed the understanding about how employees could be scheduled. The fact that the scheduling permitted under the mega maintenance agreement may be "normal," however, does not necessarily exempt it from sixth and seventh day overtime. Article 11, Section 3 says that overtime is due for the sixth and seventh consecutive days, even if those days fall in a different payroll week, which is obviously the case here. Management can escape the sixth and seventh day overtime responsibility, however, if those days were scheduled in agreement with the department committeeman to deviate from the "normal work pattern." But that is not what happened here.

The mere fact that Bill Carey participated in negotiations that changed the scheduling practices protected by AC6 does not mean that he agreed to a schedule that deviated from the normal work pattern, as that term is defined by the agreement. Indeed, the new maintenance scheduling practices seem consistent with the contract's definition of "normal." As I read the interplay between mp 11.9 and mp 10.5, the company could escape sixth and seventh day overtime if Carey agreed to a schedule that somehow varied the pattern the parties established through the mega maintenance agreement. But it cannot escape the obligation merely because Carey was part of the team that helped bargain the new scheduling practices for field forces as part of the 1993 negotiations.

Additional support for this interpretation is added by other language contained in mp 11.9. The last two sentences of that section read as follows:

For the purposes of this section ... all working schedules now normally used in any department of the plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days prior written notice thereof to the company.

The parties agree (pursuant to a request for additional information by me) that the "deemed to have been approved" language has no application to this case. But the last sentence is instructive about the kind of agreements envisioned by mp 11.9. Thus, it suggests that whether deemed approved or approved by specific agreement with the grievance committeeman, "such approval" can be withdrawn by appropriate notice. This indicates that the mutual agreement contemplated in mp 11.9 is a local or departmental agreement to work something other than the normal schedule, with the committeeman free to abandon the agreement in favor of the negotiated schedule pattern upon giving appropriate notice.

But no one suggests that the department committeeman has such discretion here. The mega maintenance agreement established a scheduling pattern that the parties obviously intended to be effective for the duration of the 1993 contract. This, then, was not a mere local agreement to vary scheduling patterns which the committeeman could abandon at his pleasure.

I understand the company's reluctance to pay overtime for schedules it negotiated with the union, and I have some sympathy for its position. Nevertheless, my task is to interpret the contract, not make declarations about bilateral fairness. The contract says unambiguously that sixth and seventh day overtime is payable even though those days may fall in a different payroll week; and it exempts the company from payment only if it makes a cancellable agreement with the grievance committeeman to vary the normal work pattern. I cannot fit the mega maintenance agreement into the type of agreement stipulated in mp 11.9 and mp 10.5. Thus, I must sustain the union's grievance.

AWARD

The grievance is sustained. The company will provide a make-whole remedy.

s/Terry A. Bethel

Terry A. Bethel

June 28, 1996