

Award No. 923
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

USWA LOCAL UNION 1010

Arbitrator: Terry A. Bethel

January 6, 1997

OPINION AND AWARD

Introduction

This is a crew size case from the caster sequence at No. 2 BOF. The case was tried in the company's offices on November 18, 1996. Pat Parker represented the company and Mike Mezo presented the case for the union. The parties submitted the case on final argument.

Appearances

For the company:

P. Parker -- Arbitration Coordinator

W. Sammon -- Sec. Mgr. Bus. Mgt. 2 BOF

C. Hansotte -- Manager, 2 BOF

L. Carpenter -- Supervisor, 2 BOF

W. Boos -- Sen. Rep., Union Rel.

J. Moscos -- Sec. Mgr., Casters, 2 BOF

For the union:

M. Mezo -- President, Local 1010

A. Jacque -- Chrm., Grievance Committee

M. Bochenek -- Griever

M. Misiukiewicz -- Griever

P. Fernandez

C. Davalos

G. Kiebofski

Background

This case involves the company's decision to eliminate one of the deck operator positions from the crew at the number 2 strand at No. 2 BOF/CC. The number 2 strand is a single strand slab caster previously manned by a crew leader, two deck operators and 2 strand operators. Beginning in September 1993, the company scheduled only one deck operator on number 2 strand, effectively reducing the 12 man crew (counting the crew at number 3 strand) to 11 men. The caster operator sequence is a skill-based sequence in which all members of the crew rotate through each assignment at designated intervals. The parties agree that the established crew size on number 2 strand was five employees, including two deck operators. Thus, the company has the burden of establishing a change in the basis for the practice of scheduling two deck operators.

Most of the facts are not in dispute, though there is some disagreement about how long certain responsibilities take and, in particular, about the basis for the practice of scheduling two deck operators. The company asserts that it scheduled two deck operators because it was necessary for one of them to constantly monitor the level of steel in the tundish. Company witness Bill Sammon explained that a tundish holds about 30 metric tons of steel and that it is necessary to maintain the level as high as possible. At start-up in 1985, the company had installed a rotary gate automatic tundish level control system which, it says, never worked properly. Thus, it fell to the second deck operator to spend most of his time monitoring the level in the tundish, a task that was necessary even on those occasions when the level control system was working, since the system was unreliable.

The company urges that the basis for the practice of assigning two deck operators changed in September of 1993, when it installed a new slide-gate automatic tundish level control system. Unlike its rotary gate predecessor, the new level control system works reliably and, according to the company, actually maintains the level in the tundish better than the deck operator could do it manually. The company says that the new system was designed to operate effectively at least 97% of the time and that it actually exceeds that level. It was the advent of this successful new level control system, the company says, which made it possible to eliminate one of the two deck operators.

The company says that the basis of assigning two deck operators was so that one of them could spend most of his time monitoring the level in the tundish. Now that that task is performed automatically, the second

deck operator is no longer needed. Or, in the language typically applied to such cases from Article 2, Section 2(d), technological advancement has made it unnecessary to assign an employee to do what can now be done automatically, and thus "the basis for the existence of the local working condition is changed or eliminated, thereby making it unnecessary to continue such local working condition. . . ."

The union notes that even at 97% efficiency, the level in the tundish still has to be monitored, a task that now falls to the remaining deck operator. This is not, however, the union's principal argument, for if the basis for the assignment of two deck operators was that one of them had to constantly monitor the level of steel in the tundish, the company ought to be able to take advantage of a technological change that makes such constant monitoring unnecessary. The company, after all, does not claim that the level never needs visual monitoring; rather, it says that the automatic level control system is now reliable enough so that such visual or manual monitoring need not be constant and that, therefore, it need no longer assign an employee to that task virtually full time.

The company's evidence was sufficient to establish that the old system did not work reliably so that a deck operator had to monitor the level constantly. The company also proved that the new system works well enough so that constant monitoring is no longer required. These conclusions, however, do not necessarily doom the union's case because it disagrees with the company's claim that the need for constant monitoring was the basis for the assignment of two deck operators. Indeed, the union points out that when the facility started up with two deck operators, the company had installed an automatic tundish level control system that it presumably expected to work. Yet, it scheduled two deck operators anyway, obviously recognizing that two were necessary for the job. The union does not deny that the original rotary gate level control system ultimately became inoperable or that one of the two deck operators spent most of his time monitoring the level in the tundish. But, the union says, that responsibility did not detract from the reason the second operator was scheduled in the first place.

The union says that the real basis for the assignment of two deck operators was safety. The union argues that the caster operation -- which involves the transfer of molten steel between vessels and into a mold -- is arguably the most dangerous job in the country's most dangerous industry. The second caster operator was there, the union says, to insure the safety of employees who work on the deck. The union does not necessarily argue that the second operator could prevent safety hazards, but it says that a second person could react to recognize threats and, in particular, could act when the other operator is in a perilous position. The parties showed a videotape of an accident on the other caster stand in which quick action by a coworker may have saved a fellow employee from more serious injury.

The union says that the safety concerns that led to the assignment of the second deck operator have not changed. It may be that the second deck operator -- who was there anyway for safety reasons -- was assigned to monitor the level when the automatic system failed, and it may be that the new system needs less monitoring. But that change, the union says, is not relevant to the reason for the original assignment. The basis for the assignment of two operators was to insure safety and the hazards that prompted that decision are still present. Indeed, the union introduced evidence that the company has instructed other employees on the caster crew to substitute for the second deck operator at times when the company recognizes the need for two workers on the deck. This is evidence, the union says, that the work still exists and has merely been shifted to other members of the crew.

The company acknowledges that it has instructed other caster employees to work on the deck at certain times. However, it has two answers to the union's claim that this work was the primary responsibility of the second deck operator. First, the company says that when there were two deck operators, one of them was sometimes -- maybe frequently -- off the deck and his responsibilities to assist the other deck operator were assumed by another employee on the crew, all of whom are part of the same skill-based occupation. Thus, the company says that the safety responsibilities were not exclusive to the deck operator. However, even if they were, the company says that the principal function of the second deck operator was to monitor the tundish level. That work is no longer needed and the remaining safety duties were minimal and residual and, therefore, could be assigned to other members of the crew.

This latter argument produced a disagreement between the parties about the length of time that a second operator is required on the deck for specific tasks, with the estimates ranging from as little as an hour a turn to two hours per turn. The union, which obviously tendered the higher estimate, questions whether two hours is so minimal as to allow assignment to other crew members. But it also says that even when no particular tasks are assigned, the second deck operator is still required for safety. Thus, the union's claim is that the second operator's safety responsibility cannot be quantified by particular tasks.

Finally, the company points to paragraph 15 of the mutual agreement concerning the manning of No. 2 BOF/CC:

Management shall exclusively determine the size and duties of the crews. . . . No grievance(s) alleging the scheduling of an improper crew size in the new operating sequences herein defined will be filed under Article 2, Section 2 of the Collective Bargaining Agreement prior to January 1, 1990.

The company says that the second sentence of this provision makes it clear that no crew size could be established until January 1, 1990. Up until that time, the company was free to adjust or change the crew sizes as it saw fit. This argument is important to the company because its evidence established that the old rotary gate level control system was not effective at least by latter 1989. Thus, when the company decided to continue two deck operators after January 1, 1990, it did so because one of them was necessary to monitor the tundish level, which was, therefore, the basis for the assignment.

The union reads paragraph 15 differently. It finds little relevance in the first sentence because the company always establishes the size of the crew. It is not the establishment that is at issue here, the union says, but the company's action in changing the crew size once it was established. The union agrees that the second sentence is the operative language here. However, it denies that no practice could be established until January 1, 1990. The union reminds me that steel industry arbitrators have recognized that a local working condition -- an established practice -- is the normal response to a recurring set of circumstances over time. Thus, any practice that existed on January 1, 1990 must have developed in some time period prior to that date.

In the union's view, the practice at issue here developed just as all other practices develop. The crew size emerged as the normal response of the parties to the conditions that existed following start-up. The union was precluded from challenging the practice until after January 1, 1990, but, from the union's perspective, the practice did not begin on that date but was established at an earlier time.

Discussion

Paragraph 15 of the mutual agreement is the determinative factor in this case. I have some difficulty understanding the original basis for the assignment of two deck operators. To his credit, Mr. Sammon, who was not present at start up, would not speculate about the reason for the assignment. I agree with the union's claim, however, that the company would not likely have assigned two operators so that one of them could simply monitor an automatic system. As matters developed, the rotary-gate level control system did not work, but there was no evidence that the company expected that result when it installed the equipment. It is reasonable to assume -- as the union argues -- that the company expected the level control system to operate effectively, yet it assigned two deck operators anyway. Under such circumstances, I am not willing to find that this manning decision was made so that one of the two operators could monitor the level in the tundish.

It may be, as the union argues, that the second deck operator was assigned due to safety considerations. No one contests that the caster is a dangerous place or that a second pair of eyes might spot hazards that could not be observed by only one employee. Moreover, the company was not able to offer a convincing reason why it initially assigned two deck operators, thus creating the inference that the union would have me draw -- that the second one must have been there to insure safety. Although the force of that inference is not overpowering, it would be more compelling were it not for paragraph 15.

I agree with the union's assertion that the basis for the crew size -- whatever it might be -- did not originate on January 1, 1990. Rather, the crew size became protected as of that date. The language makes it clear that, prior to January 2, 1990, the company was free to alter the crew size without recourse by the union. The union correctly argues that the crew that became protected as of January 1, 1990 was one that developed as a normal response to a recurring set of circumstances before January 1. But it does not follow that the crew size was one that developed in a time period immediately after start-up, which is essentially what the union argues.

There may be other ways to read the second sentence of Paragraph 15, but it seems clearly to mean that the company had a time period -- from start up until January 1, 1990 -- to establish a crew size. Although it began operations with two deck operators, it could have decided any time up to January 1, 1990, that it needed only one or, presumably, that it needed none at all. Similarly, it might have decided that it did not need two strand operators, or that it did not need a crew leader. All of those were options the company maintained until January 1, 1990, when the union gained the right to file grievances about protected crew size. It is not fair, then, to saddle the company with its original ideas about what crew might be appropriate. The company bargained for the right to make adjustments to the crew size and, while it apparently did not

do so, that does not mean that circumstances might not have developed during the initial period (until January 1, 1990) which caused it to view the purpose of the crew differently.

Here, for example, the company initially decided to schedule two deck operators for reasons that are not clear from the record. The union could not have complained if, sometime prior to January 1, 1990, the company dropped the number of deck operators to one. The fact that the company kept two operators, however, does not necessarily mean that its original hunch about how many it needed was accurate. Rather, it may mean only that circumstances changed and convinced the company that, no matter why two operators were originally put on the deck, two were necessary at least by late 1989 because the rotary gate leveling system did not work.

The union's argument suggests that the company had already decided to keep two deck operators long before the failure of the initial leveling system, which means that the basis for the assignment must have been grounded in some other facet of the work. It is not clear to me, however, that the original leveling system actually worked very well for very long. It is true, as the union argues, that the system worked about 20% of the time at certain points in late 1989. But it is also true that a company memo dated October 1989 speaks of trying to "resurrect" the system, a clear signal that it had not been operating at a high level of efficiency.

There was testimony from a union witness that the old system worked very well at times, initially as much as 75% of the time. Sammon, the company's witness, did not deny this claim. However, he said that the system was never reliable, even early in its use, when it may have worked three-fourths of the time. Thus, the company had to use the second deck operator to constantly monitor the level in the tundish. He also said that the company recognized the systems' unreliability shortly after the start up and that even the crews stopped using it fairly early because of problems. There is some dispute between company and union about how long the crews actually used the system, but I cannot conclude that crews used it regularly and reliably into the late 1980's. Rather, it seems clear that problems with the system caused the company to assign the second deck operator to monitor tundish level not long after start up and that this assignment continued until September 1993, when the new system became operational.

This finding is important because of the reading I have given Paragraph 15 of the mutual agreement.

Whatever the company's original idea might have been, it seems clear that for some substantial time prior to January 1, 1990, the second deck operator's principal function was to monitor the level in the tundish. I conclude, then, that the basis for the assignment of a second deck operator that became protected on January 1, 1990 was to monitor the level. And, of course, the need for that task changed dramatically with the installation of the new slide-gate system.

I do not mean to minimize the union's legitimate concern with the safety of the employees who work on the caster. No one could question that two employees can better spot and react to hazards than one. It does not follow from that, however, that the company originally assigned two employees principally due to safety concerns. And, even if it did, it does not follow that safety was the basis for the continued assignment of two deck operators by January 1, 1990. That is not to say that the company would have had no interest in safety. But an employee already there principally to perform another task could also act as a look out. And it does not help the union's cause that one of the deck operators was sometimes off the deck and that other crew members substituted for safety backup when needed. This is not, after all, a case in which the company eliminated an occupation and assigned its duties elsewhere. Rather, it merely shifted some minimal remaining back up responsibilities to other members of the same occupation who, the evidence showed, had performed them on a more-than-occasional basis in the past.

Given my conclusion about the meaning of Paragraph 15, and my factual findings about the basis for the assignment of two deck operators, I must find that the installation of the new slide gate leveling system changed or eliminated the need for two deck operators. Accordingly, I must deny the grievance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

January 6, 1997