Award No. 949
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
September 29, 1998
OPINION AND AWARD
Introduction
This case concerns the union's claim that the company violated Article 13, Section 3 when it transferred work from the mobile equipment sequence of the yard department into the burnt lime sequence. The case was tried in the company's offices on July 21, 1998. Patrick 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 -- Section Mgr., Arbitration and Advocacy
J. Spear -- Staff Representative, Union Relations
J. Loudermilk -- Customer Service Rep., Internal Logistics
J. Steele -- Retiree, Former Section Mgr., Lime Plant
D. Ensign -- Supervisor, Lime Plant
R. Dominguez -- Burnt Lime Sequence
F. Spencer -- Burnt Lime Sequence
B. Calhoun -- Section Mgr., Lime Plant
For the union:
M. Mezo -- USWA Fourth Step Rep.
A. Jacque -- Chairman, Grievance Committee
D. Shattuck -- Secretary, Grievance Committee
V. Chelf -- Witness
J. Gutierrez -- Base Rate Chairman
T. Turpin -- Grievant
L. Gonzalez -- Grievant
R. Mikita -- Witness
C. Melion -- Witness
W. Jefferson -- Grievant
J. O'Donohue -- Griever
J. Strauch -- Assistant Griever
R Djurich -- Griever
Background
In this case, the union says that the company had no right to transfer work of the yard department mobile equipment operators outside the seniority sequence by assigning it to employees in the burnt lime sequence. Many of the important facts are in dispute; however, it is not necessary to reproduce the testimony of all thirteen witnesses in great detail. The company began operating the lime plant in 1974. It was originally a part of No. 3 open hearth department, which was shut down in 1986. For about two years the lime plant apparently operated as a separate department. It became part of No. 4 BOF/CC in 1988. At issue in this case is certain work associated with movement of raw materials into the production process which produces lime that the company can use in steelmaking. Limestone is delivered to the Inland docks about nine months out of the year, when passage on the great lakes is possible. During that period, the company uses a front end loader to perform related tasks. It loads the hopper (which was sometimes referred to as charging or loading the bins) which apparently introduces the limestone directly into the process of producing lime. In addition, the front end loader fills a conveyer with limestone that is transported to what the company calls the winter piles. As the name implies, these are large piles of limestone, apparently six in all, that sit atop grates that open into vibrating feeders. As explained at the hearing, the vibration moves limestone into the feeder, where it is then taken into the process of producing lime. The winter piles are used primarily - and maybe exclusively - in the three months when ship traffic to the docks is not possible. The front end loaders also play an important role in those months. Testimony indicated that the vibration under the piles

causes a cone-like effect, where stone from the middle of the pile is taken into the feeder. One function of the front end loader is to push stone from the edges of the piles into the center. In addition, there was testimony that cold weather causes the limestone to freeze into large chunks that cannot be used in the production process. The front end loader, then, spends time breaking up the chunks.

Although there is a dispute about whether they did so exclusively, there is agreement that from 1986 when the open hearth closed until 1992, the company regularly used mobile equipment operators from the yard department to run the front end loaders used in this operation. There was testimony that the front end loaders loaded the hopper every turn at least once a turn and, for at least part of the time between 1986 and 1992, twice. There was general agreement that the front end loader was on site at the lime plant for at least four hours per turn and sometimes longer. Bargaining unit members testified that they were often there for eight hours. In addition to filling the hopper, they would send stone to the winter piles and, in the winter, work on the winter piles themselves. Finally, there was testimony that the front end loaders regularly loaded trucks with limestone, including very large trucks.

It is also clear that the lime plant itself had a small front end loader, which the union and some company witness referred to as a pay loader. The pay loader is simply a small front end loader, which has about 30% of the capacity of the front end loader used by the yard department employees. The pay loader was operated by a member of the burnt lime sequence. There is some dispute about what this employee did. The company acknowledges that he used the pay loader to clean roads and clean up spills. But, it says, he also used it to fill the hopper from time to time, to send limestone to the winter piles, to load trucks, and to push in stone from the outside of the winter piles. There was a significant dispute about how much, if any, of this work the pay loader was able to do. Bargaining unit members testified that they never saw it do any of the functions they regularly did with the front end loader. They also said that the machine was too small to load trucks unless it built a ramp on both sides, something they had never seen anyone do. They said the pay loader would not be able to use the ramps they built to feed the hopper, since they wouldn't be high enough for the smaller pay loader. And, they said, if the pay loader had built up the ramps while the front end loaders were gone from the area, they would have been able to tell, both because the ramp would have been higher and it would have been too narrow for them to use. Also, union witnesses said the pay loader was so small that it would not have been able to keep up with operations. Union witnesses said there was no evidence that the pay loader had ever done any of this work.

In contrast, the company witnesses said the pay loader was used on all of these tasks from time to time. They pointed out that the open hearth department had a pay loader and, when the lime plant was still part of that department, the pay loader would sometimes be sent to the lime plant to do that work, as well as general clean up work. When the open hearth closed, the lime plant got the pay loader and continued to use it for the same purpose. Company witnesses were careful, however, not to claim that the pay loader performed a significant amount of this work. John Thomas Loudermilk, who was the north end planner responsible for the movement of the raw materials from 1990 to 1992, testified that in that period he might have seen the pay loader load the hopper about a half a dozen times. Jerry Steele, former section manager of the lime plant, said he used the pay loader for these tasks, "on occasion." He said it was typically in weather related circumstances, where the front end loader had been called away for some reason. Don Ensign, a supervisor in the lime plant, said the pay loader would feed the hopper if the front end loader was called away, something that he said happened most often on the midnight turn. He said it might happen two or three times a week on midnight turns. Raul Dominguez, a lime plant operator, said the pay loader was used "sometimes." However, he also said that if the lime plant needed a front end loader, the "first reaction" was to call the yard department. Frank Spencer, a bagger at the lime pant, said lime plant employees would used the pay loader to fill the hopper when they were "running out of stone."

There is no question that the front end loader was sometimes called away from the lime plant, though the parties disagree about how often this occurred. Union witnesses said they were only occasionally called away, though they acknowledged that it happened more frequently in the later years. Also, the company witnesses said that the front end loader was more likely to be called away on night turn, which is when the coke cars were loaded. However, on many occasions, the front end loader would return to the lime plant after finishing a task elsewhere. And, although the front end loader may have been called away, the record supports the conclusion that the front end loader was scheduled in the lime plant on every turn and was there for at least four hours. Indeed, Union Exhibit 7 is a copy of a memo from the yard department indicating that over a holiday weekend it would not be necessary to maintain 24 hour coverage at the lime plant. This creates an inference that it was necessary to do so at other times, a conclusion that is supported by testimony from both union and company witnesses.

The problem that led to this dispute is that in 1992, the company stopped using yard department employees to operate the front end loader. In fact, the company acquired a front end loader for the lime plant and an employee from that sequence operated it. The company points out that it hired no new employees when it acquired this work, a contention the union does not dispute. However, the union says that the company's action resulted in the layoff of employees from the mobile equipment sequence in the yard department and that its action was improper under Article 13, Section 3. As will be more fully discussed below, there is general agreement that the company cannot transfer work across seniority sequence lines in some circumstances. As typically expressed, those circumstances are when the employees have performed a recognizable body of work with reasonable consistency and exclusivity. The union says those criteria are met in this case, a contention which the company denies.

Discussion

This case raises the sometimes confusing issue of whether the company can transfer certain job duties away from employees in one seniority sequence and assign them to employees in a different seniority sequence. As I will discuss, I have had occasion to address this issue many times, though it is fair to observe that my opinions have left questions unanswered. The starting point, as both parties recognize, is that position-rated employees cannot claim a right to certain work merely because the duties have typically been assigned to them over the years. There are, however, decisions that recognize that the Agreement provides protection for seniority sequences, the apparent rational being that if jobs can be assigned away from the sequence at random, then the sequence itself could easily be eliminated. However, Article 13, Section 3, says that the seniority sequences are to remain in effect unless changed by agreement. In Inland Award 813, former permanent arbitrator McDermott, acting in accordance with established industry precedent, interpreted this language from Article 13 to "give some meaningful protection for jobs in a given seniority sequence." The standard, as established by arbitrator McDermott in Award 813, is whether "a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity." If so, McDermott said, the employer could not transfer the work across seniority sequence lines. This does not mean that work can never be transferred across seniority sequence lines. Thus, if the employer has eliminated substantially all of the duties of an occupation, it may transfer the residual duties across seniority unit lines. The parties have recognized this principle at Inland, though they sometimes argue about whether the remaining duties are simply residual. Similarly, other industry awards have recognized that an employer can transfer incidental duties, even if a job is not eliminated. See e.g., USS-7055-S.

As typically understood by these parties, there are two questions: first, whether there is a recognizable body of work and, second, whether it has been performed with reasonable consistency and exclusivity by the seniority sequence in question. Although often addressed separately, these questions are sometimes related. Presumably, every seniority sequence preforms a recognizable body of work, since the employees within the sequence, by and large, do about the same thing every day. Whether in the yard department, the burnt lime sequence, or the BOF, employees know, generally, what is expected of them on a daily basis. The feature that protects their right to keep these duties -- or, at least, not have them assigned to employees in other sequences -- is the fact that they do them "with reasonable consistency and exclusivity." As I have recognized before, and as the parties forthrightly recognize in this case, the parties dispute the body of work in order to prevail on the requirement of exclusivity. The employer wants the body of work to be large, thus increasing the chance that other employees around the mill will have performed similar duties. The larger the body of work, the less likely the union can claim exclusivity. Conversely, the union typically argues for a narrow body of work, thus minimizing the company's ability to argue that other employees have done the same sort of duties. That pattern is repeated in this case These conflicting positions have led to some confusion, probably due in part to Arbitrator McDermott's decision to adopt for seniority sequence protection a version of the exclusivity standard which is typically used to protect craft duties under Article 2, Section 2. Although Award 813 does not incorporate that standard directly, it does say that the principles of Article 2, Section 2 "aid" the interpretation of Article 13, Section 3. It is that standard under which these parties have struggled.

The employer says that while the employees in the yard department mobile equipment sequence frequently operated front end loaders in the lime department, the same kind of work is performed elsewhere in the plant by employees in different seniority sequences. Thus, it submitted evidence that employees in the blast furnaces, the BOFs, the electric furnaces and the scrap yards operate front end loaders as a regular part of the job. The employer, of course, has a similar argument, even if one views the body of work narrowly. If the body of work is filling the hoppers and pushing limestone at the lime plant, the company says that the employee from the burnt lime sequence who operated the pay loader also did the same thing, thus defeating

the union's claim of exclusivity. The company's principal defense, however, is that it makes no sense to view the lime plant in isolation when similar work is going on elsewhere in the plant.

The union, however, says that viewing the front end loader's activity at the lime plant as a separate body of work makes sense because of the way the company has administered the operation. The union points out that the company regularly and consistently treated the lime plant as a distinct assignment because it assigned employees from the yard department to do a significant amount of work there on every operating turn, every day. This action, the union says, was a recognition that there was a body of work in the lime pant and that yard department mobile equipment operators were expected to do it. And, the union says, the fact that employees from the burnt lime sequence did the work - if, in fact, they ever did - is not fatal because previous decisions have recognized that only "reasonable exclusivity" is required. Some exceptions to the exclusive performance of a body of work, the union argues, would not defeat its claim.

Although the parties have debated the meaning of reasonable exclusivity, and have even tried cases limited to that issue, the more difficult problem has been identification of the appropriate body of work. Despite the number of decisions, a review of what has come before does not necessarily make the present case easier. This is due in large part to the decisions themselves, though, as I observed in a previous opinion, the actions of the parties have sometimes contributed to the ambiguity. In Inland Award 882, I expressed concern about some cases in which the parties had agreed that there was a narrow body of work, despite the fact that similar work was performed elsewhere in the plant, which is exactly the argument the company raises here in favor of a broad-based body of work. As I will discuss below, it is difficult not to see those cases as a recognition by the company that similarity of skills in other departments does not necessarily defeat a union claim that the appropriate body of work is narrow.

But the union's focus on the way the work is assigned has its own problems. Arbitrators in the steel industry in general, and at Inland in particular, have recognized that position rated employees cannot create a local working condition merely because the company has consistently assigned certain duties to them. As Arbitrator McDermott said in Inland Award 813:

Position rated jobs have no right to claim that past assignment of duties to them requires that such duties always be assigned there, and there are no local working conditions principles arising from Article 2, Section 2 to change that conclusion in these circumstances.

What McDermott said position rated employees cannot do seems to be exactly what the union seeks to do in this and similar cases. That is, the union's principal argument for a narrow body of work is that, until 1992, the company consistently assigned the lime plant front end loader work principally to yard department employees. Of course, it is fair to recognize that after saying in Award 813 that position rated employees could not avail themselves of the benefits of Article 2, Section 2, McDermott also observed that Article 13, Section 3, assisted by the principles of Article 2, Section 2, could limit the company's right to assign work across seniority sequence lines. Thus, the principles pull in opposite directions - position rated employees cannot acquire exclusive rights to assignments, but if there has been an exclusive assignment of a body of work, the employer cannot transfer the work to another sequence, subject to certain limitations. That there are some limitations on the employer's freedom to transfer work across seniority sequence lines is recognized throughout the industry and has been applied at Inland. In Inland Award 813, the union sought additional work that was to be created by the construction of new facilities. Unlike the instant case, the union was not attempting to segregate a small body of work and protect if from reassignment. Rather, it argued that employees in the switching sequence had always done the switching duties "throughout the plant," a fact noted by McDermott in his findings:

. . . it must be concluded that, although there are some exceptions to the claim of exclusivity . . . the evidence is reasonably sufficient to establish that the [switching sequence] is the proper repository of switching duties in this plant, because the parties have so administered them.

It is the last seven words of that quotation that forms the nucleus of the union's argument in this case. That is, McDermott seemingly found that the switching sequence was entitled to the switching work throughout the plant because that was the way the company had always assigned such work. But there is also support for the company's position in this finding because McDermott also apparently concluded that the company had assigned those duties to one sequence on a plant wide basis, thus creating the kind of exclusivity that is not present in the instant case. Similarly, both parties find support in Inland Award 854. The company points out that the work sought to be protected by the union in that case was performed by the sequence employees on a plant wide basis. The union notes, however, that the case focused solely on work in the transportation department, though a large part of the union's argument was that the transportation employees performed the disputed work on a plant-wide basis.

Other Inland cases, however, do not focus on plant-wide assignments. In Inland Award 835, for example, I found that the company did not violate Article 13 when it assigned certain work on segment 0's away from the employees who had traditionally performed it. It is fair to note that the union's argument in that case was similar to the one it tenders in the instant case. In Award 835, the company had regularly and consistently assigned build up work on segment 0's to a certain group of employees and had assigned similar work on adjoining segments to another sequence. The union argued that the assignment of segments 0's exclusively to one sequence created a separate body of work, essentially the same contention that it offered here. However, I focused on the fact that the work on the other segments was nearly identical to the segment 0's and was, obviously, related to it, since the segments were part of a continuous production process. It did not make sense, then, to segregate one small portion of that work away from the larger whole. There was a similar conclusion in Inland Award 872, though the principal issue in that case is not present in the instant case. Nonetheless, Award 872 recognized that it made no sense to view certain assignments as a separate body of work when similar work was performed nearby by another seniority sequence.

All of these cases do focus on large bodies of work and look to the similarity of other jobs performed in the plant. But it would be inaccurate to conclude that there can never be the kind of narrow body of work the union argues for in this case. In Inland Award 882, I adopted the union's contention that the body of work was narrow, even though it was clear that other employees in a different seniority sequence were performing similar work in other roll shops throughout the mill.

In seeking to identify the exclusivity of a body of work, these parties seemingly address a different issue than the one typically confronted elsewhere in the industry. In some relationships, for example, the key question is not whether there is an identifiable body of work, but, rather, whether an entire job has been transferred across seniority unit lines. For example, in USS-13,697, the company had historically assigned gun operators from the masonry seniority unit to perform gunning work at various locations, including the forge department. However, the forge department acquired its own equipment and assigned the work to employees in a different seniority sequence. As is true here, there was other work available for the masonry department gun operators, but no longer any in the forge department. Moreover, there were other employees around the plant in different seniority sequences who did gunning work. The company claimed that its action was necessary, in part, because it was easier to supervise employees who were associated with the department and the centralized gun crews were not always readily available, both arguments that were also advanced by the company for the changes at issue in the instant case. The Board found that the employer's assignments violated Article 13: ". . .[The company may not unilaterally not assign duties across seniority unit lines when such reassignment will, in effect, constitute the transfer of a complete job to another seniority unit. That is what occurred here." The Board said the company's action "had the effect of unilaterally modifying an existing seniority unit established under Section 13-B." Of particular importance to the matter at issue here, the Board also dismissed the fact that "in other areas of the plant there are other gun crews attached to different seniority units." It said the circumstances under which those assignments were created were "lost in antiquity," an elegant was of saying that no one remembered how the pattern of assignments arose. This case is similar in many respects to the instant case, except that the record in the present case will not support a finding that an entire job was transferred across seniority unit lines. The evidence establishes that the mobile equipment operators were in the lime plant for at least four hours every day, and often more. But there is no dispute about the fact that the same employees also had significant duties elsewhere. In USS-13,697, the gun operators worked full time in the forge department. The company simply changed that full time job from one seniority sequence to another.

Unlike the USS-USWA relationship, these parties have not made the transfer of an entire job the determining factor under Article 13. Rather, focusing on McDermott's language in Inland 813, they have been concerned with whether a particular body of work has been performed with the requisite exclusivity. I have already noted that the company and the union have agreed in prior cases that the appropriate body of work could be confined to one department or area, despite the fact that similar work is performed elsewhere. Even though I raised a question about that in Award 882, there was no explanation in the instant case of why it is appropriate to narrow the body of work in some cases, but not others. This is not a criticism of the advocates in this case. I suspect the reason for their silence is that, as the Board observed in USS-13,697, the "reasons have been lost in antiquity," meaning that no one knows. But it is clear that there is at least some understanding by these parties that the body of work can sometimes be narrow.

The company's position in this case would seem to prevent the union from ever protecting seniority sequences under Article 13. Although there have been cases in which the company has conceded a narrow

body of work, the company typically looks at a broader spectrum of work. In effect, this means that if there are employees in the mill performing work similar to the work at issue, the union cannot claim exclusivity and its case falls. That essentially, is the argument at issue here. The company says that even if mobile equipment sequence employees run front end loaders in the lime department, there is no exclusivity because other employees in other seniority sequences are operating front end loaders in other parts of the mill. If this argument has merit, then it is hard to see how there could ever be a successful case under Article 13, Section 3 save in those cases, like 813 and 854, where a sequence generally performs services exclusively on a plant wide basis. Yet the parties themselves have not administered the agreement in this fashion and it seems clear that McDermott did not intend that they should since his opinion says expressly that Article 13, Section 3 was "intended to carry some meaningful protection for jobs in given seniority sequences, less than plant-wide." (Emphasis added).

The key facts here are that the company routinely made the lime plant assignment to employees of the mobile equipment sequence for an extended period of time on each operating turn. The work always lasted between four and eight hours. This was, then, not merely an incidental duty that was part of a larger daily bundle of duties. Credible testimony from union witnesses indicated that employees were often there for the entire turn and, on the occasions when they were called away to load a truck elsewhere, were expected to return after that task was completed. Nor can this logically be seen as an assignment in which the front end loader was merely called to assist existing forces already doing the same or similar work, a fact that might be determinative if it existed. The mobile equipment sequence was looked to first and it was understood that those employees had the responsibility of loading the hopper and maintaining the winter piles. And, while there are other front end loaders working in the plant, there was no evidence that they are doing the same kind of work under similar circumstances nearby or in the same production process. I have no doubt that there were occasions when a lime plant employee did the same thing with the pay loader. On this record, however, I am unable to find that the work was more than occasional or even that it possible for the pay loader to make significant inroads on the required tasks. The parties understood from their method of operation that this was an assignment that was to be given to and performed by the mobile equipment sequence. <FN 1> This should not be understood to mean that a sequence can protect every duty it ever performs, without regard to what is happening elsewhere. Inland cases already demonstrate that, as in Inland Awards 835 and 872. Here, however, the presence of front end loaders elsewhere in the plant is not sufficient to destroy the fact that the parties understood this assignment to be one the mobile equipment sequence was expected to perform to the exclusion of others. In those circumstances, I will sustain the grievance.

The union asks for make whole relief. In accordance with the procedure usually followed by these parties, I will order such a remedy with the understanding that the parties can resubmit that part of the dispute if they are unable to agree on the appropriate remedy.

AWARD

The grievance is sustained. The company violated Article 13, Section 3 when it transferred the disputed work out of the mobile equipment sequence and it will provide a make-whole remedy.

/s/ Terry A. Bethel

Terry A. Bethel

September 29, 1998

<FN 1> I do not give determinative weight to Union Exhibit 4, an Idea Evaluation form from the company's ATQ program. Obviously, the company should have the ability to explore ideas and the possible effect of their implementation without fear that every notation will be used against it. This form, then, means nothing more than that an experienced labor relations professional raised the possibility that assigning work from one group of employees to another sometimes causes "jurisdiction" problems, exactly the kind of advice the company employs him to provide. It does not mean that he said there was, in fact, a jurisdiction problem.