

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And

Award 962

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company improperly paid employees who it says were working as ladle liner helpers between 1993 and shortly before the time of the arbitration hearing, as well as its assertion that the job those employees perform should have been subjected to a re-evaluation. The case was tried in the Company's offices on December 16, 1998. Pat Parker represented the Company and Dennis Shattuck presented the case for the Union. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Manager, Arbitration and Advocacy
W. Boos.....Senior Representative, Union Relations
J. Grattan.....Section Mgr., Steelmaking, 4BOF
W. Krill.....Staff Wage Analyst

For the Union:

D. Shattuck.....Grievance Committee Chairman
J. O'Donohue.....Griever
R. Salinas.....Witness
J. Gutierrez.....Witness
I. Henderson.....Witness
D. Clemens.....Grievant

Background

In 1993, the Union filed a Base Rate Discussion Report complaining that the Company had not properly classified or described a job it had created, explaining, "The company has created a job utilizing the laborers who work with the masons. They must work with a jib crane in performing their job." There is no question that this complaint applied to a group of laborers who were routinely assigned to work with the masons in repairing ladles at 4BOF. The masons, who are part of a different bargaining unit, perform the task of applying mortar and refractory to the ladles; the laborers tear out old refractory and assist the masons by insuring that they have the proper materials. The current job description for general laborer has been in effect since February, 1967. It indicates that a general laborer can be expected to use such tools and equipment as a shovel, sledge, bar, hooking devices, concrete buster, pneumatic tools and hand tools, all of which are used at one time or another in the ladle reline area. It also lists such typical duties as "demolishes and/or removes ... old linings, debris, etc., from ... ladles;" and "Assists masons ... during rebuilds, repairs, ... etc., Performs such general labor tasks as busting concrete, handling brick, mixing cement and patching materials." There is also other general language that may describe the work traditionally performed by laborers in the ladle reline area.

Nothing in the job description for general laborer indicates that such employees will use a crane. It was this omission, the Company says, that led to the base rate discussion report in 1993. Bill Krill, the Company's staff wage analyst, testified that the crane use requirement was the focus of the Union's concern at the time. This concern led to the creation of a new position called ladle lining helper, for which the job description was completed in June, 1993. The Company says the duties of the ladle lining helper are essentially identical to those of the general laborers assigned to the ladle reline area, except that the ladle lining helper position also includes the responsibility to "operate the monorail hoist." After evaluation, the position was compensated at job class 4, in contrast to the laborer, which is job class 2. At the same time as it evaluated and described the ladle lining helper, the Company also amended the job description for the labor leader position. Traditionally, the labor leader functioned as a member of the crew, though he had the added responsibility of assignment and direction. In 1993, the job description was amended to indicate that the labor leader also directed the ladle lining helper and that he operated the monorail crane.

Following 1993, the Company says the monorail crane was to be operated principally by the labor leader. On occasions when the labor leader was unavailable, the senior laborer was to be advanced to the ladle lining helper position and he was to operate the crane. The other employees on site were to be paid as laborers. There was general agreement that the Company has insisted on this method of operation since several months before the arbitration hearing. The Union says, however, that between 1993 and the recent change, laborers often operated the crane, and it called witnesses who said that laborers were expected to run the crane during this period. Moreover, the Union says that management must have known this was happening for several reasons. First, the ladle reline area is fairly compact and any supervisor in the area should be able

to observe laborers operating the crane. In addition, the Union introduced testimony that laborers are routinely trained to operate the crane and that many of their functions require crane use. Finally, labor leader Isaiah Henderson testified that he has routinely told laborers to run the crane since he started in the area in 1996 and that management was aware of it. In particular, he said Jeff Grattan often visits the area and that laborers have been operating the crane when he was there. Henderson mentioned an investigation of a dropped block in which he identified a laborer as the one who had operated the crane, which Grattan said nothing about. Moreover, Henderson said that when Grattan told him that only labor leaders and ladle lining helpers were to operate the crane, he told Grattan that this would change the way things have been done and that Grattan "was not surprised." Henderson said no one had ever told him that laborers were not to operate the crane until recently. Joint Exhibit 1-I is a memo from Section Manager J.F. Mayberry dated August 16, 1995. It is addressed to Greg Owen (not identified in the hearing) and labor leaders, and says that labor leaders are to operate the crane and, when unavailable, the senior laborer is to be advanced to the labor lining helper position. The only testimony about this exhibit came from Henderson, who denied ever seeing it. The exhibit is dated about a year earlier than Henderson became a labor leader.

The Union concedes that the Company has the right to decide that general laborers will not operate the crane. However, it advances multiple positions about the Company's actions. First, the Union notes, as the Company does, that one of the principal differences (the Company says the only difference) between a laborer and a ladle lining helper is that the ladle lining helper operates the monorail hoist and the laborer does not. However, the Union says it is clear that all of the laborers assigned to the ladle reline area between 1993 and up until a few months ago were

expected to operate the crane. Thus, in effect, the Union says that all of these employees were actually working as ladle lining helpers and were entitled to be compensated as such. Indeed, the Union says that the creation of the ladle lining helper position in 1993 was effectively an admission that the employees were improperly paid as general laborers between 1967 and 1993. The fact that the contract imposed a limitation of the extent of the Company's liability, the Union says, does not change the fact that the new job essentially conceded that crane operation – which all of the employees had been expected to do – was not a function that could be required of a laborer. The Union says, then, that all employees assigned as general laborers after 1993 and until recently were actually ladle lining helpers and are entitled to be paid as such.

In addition to this argument, the Union says that the same employees should still be compensated as ladle lining helpers even after the removal of the crane duties. The Union says that it is not fair to focus on the crane duties to the exclusion of all others. Even after the employees were told to stop operating the crane, the Union says they continued to perform all other duties described in the ladle lining helper position, and those are really the primary functions of the position. In addition, the Union points to another difference between the general laborer job description and the one for ladle lining helper. One of the materials listed as used by the ladle lining helper is “mortar.” In contrast, the laborer job description says nothing about mortar. Rather, it lists patching materials among the materials used and indicates that laborers will mix cement and patching materials when assisting the masons. The Union says there is a difference between cement and mortar and the use of mortar itself is enough to establish that the employees assigned to assist the masons should be paid as ladle lining helpers.

Finally, the Union says that the Company had an obligation to reclassify the job that remained for the employees who assist the masons, after it removed the operation of the monorail crane. Although not so presented, this is actually an alternative argument. Thus, if I agree with the Union's claim that these employees should still be classified as ladle lining helpers because they work with mortar or because they continue to perform the principal duties of that position, then there is no reason to have the job re-evaluated. The Union's argument is that they should still be considered to be ladle lining helpers, even though one duty has been removed from them. However, if I disagree with the Union's position that the employees should remain ladle lining helpers – that is, if I think that the removal of the crane was significant enough to take them out of that classification – then the Union argues that the job should be re-evaluated. What this argument really means is that the Union disagrees with the Company's claim that the employees are either laborers or ladle lining helpers and that the operation of the crane is the distinguishing feature. The Union says that even if the employees are not ladle lining helpers because employees in that classification must operate a crane, it does not follow that they are laborers. Rather, the Union says that the employees still perform almost all of the duties of the ladle lining helper and, as such, deserve to have their function distinguished from the laborers.

The Company says there is no reason to re-evaluate the job. All of the work performed by the employees assigned to assist the masons is included in the job description of the laborer, except the operation of the crane. But, the Company says, it created the ladle lining helper position in 1993 precisely because laborers were not supposed to operate the crane. Since that time, the crane was to have been operated only by the labor leader or by an employee designated as the ladle lining helper. If labor leaders have directed laborers to operate the crane, then it was

done without the knowledge or consent of the Company. Moreover, the employees had a responsibility to ask for the appropriate rate of pay, since there was otherwise no way for the Company to know they had worked in the ladle lining helper position. The Company says it is inappropriate to consider all of the laborers assigned to assist the masons as ladle lining helpers. In effect, what the Company really says is that the ladle lining helper position was created in order to insure that the Company did not have to pay all of the laborers the higher ladle lining helper rate of pay. Crane operation was to be limited to the labor leader or the ladle lining helper, with the other employees continuing to perform work included in the laborer job description.

Findings and Discussion

The parties look at this case in fundamentally different ways. From the Company's perspective, after 1993, only two employees were to operate the crane and any laborer who did so had an obligation to inform supervision so that the time spent on crane operation could be paid at the ladle lining helper rate. The Union, however, says that the Company created the new job of ladle lining helper and all of the employees on the crew worked in that position, since all of them were responsible for operating the crane. Thus, from the Union's perspective, the employees should not receive pay for having been upgraded to ladle lining helper from time to time; the Union says that all of the employees were ladle lining helpers, at least until the recent change.

Joint Exhibit 1-I is some evidence that the Company expected the crane to be operated only by labor leaders and ladle lining helpers and, importantly for this case, that the Company did not expect to treat all of the crew as ladle lining helpers. Moreover, Grattan is a credible witness and there is no reason to believe that he viewed all of the laborers as ladle lining helpers. But

Joint Exhibit 1-I was apparently not distributed until about two years after creation of the ladle lining helper position and Grattan did not arrive in the BOF until a year later, in August of 1996. There is no evidence from any Company witness about how the laborers worked prior to 1995 and no evidence that Joint Exhibit 1-I ever had any effect. The only evidence, in fact, was from the laborers and the labor leader, who said that laborers always operated the crane. Moreover, Grattan did not really rebut Henderson's testimony that he (Grattan) had seen laborers operating the crane or that he was not surprised when Henderson told him the recent direction would change the way things had been done.

I have no real doubt that the Company created the ladle lining helper to insure that, in the absence of the labor leader, only one person would be paid the higher rate associated with crane operation. But I am unable to conclude that it ever really implemented this scheme until recently. Rather, the evidence supports a conclusion that, until the recent change, all of the laborers were expected to, and in fact did, operate the crane. Obviously, their crane operation was not constant. The point, however, is not that they operated the crane on a continuous basis but, rather, that they were expected to operate it as a normal and accepted part of their responsibilities. This means, then, that they were actually working as ladle lining helpers during that period. The Company acknowledges that it created this position to insure that someone would be available to operate the crane who would be paid the ladle lining helper rate even for the periods of a shift in which no crane operation was required and the helper was performing the same duties as the rest of the crew. As I will explain below, I believe the Company can implement such a scheme. But there is insufficient evidence here that it did so until recently. Rather, the evidence establishes that all of the employees assigned to assist the masons were expected to operate the crane and, as such, they

had to be paid as ladle lining helpers, and not laborers, since laborers had no responsibility for crane operation.

The Union does not contest the Company's right to remove crane operation from the employees assigned to assist the masons. It says, however, that one of two things is true: either the employees remain as ladle lining helpers because they continue to perform the bulk of the duties or work with mortar; or, since the Company took crane operation away from a group of ladle lining helpers, it must reclassify them into a new position, taking into account all of their duties except crane operation. Obviously, what the Union has in mind is something like the bricklayer helper, a job class 3 position under the CWS system.

Certainly, these parties could have created a job between the laborer and what is now the ladle lining helper position, had they chosen to do so. But it seems clear that they put those duties in the general laborer position, as they clearly had a right to do. An examination of the work performed to help the masons, as explained at the hearing, reveals that everything the employees do is covered by the general laborer job description, except for crane operation. I am unable to accept the Union's claim that the employees in the reline area must be distinguished from laborers because they work with mortar, a word that does not appear in the general laborer job description. The general laborer position does contain the word "cement," and it appears alongside the word "brick." Thus, paragraph e. of the job description says that laborers will "assist masons and operating personnel during rebuilds, repairs," etc., and that they will perform such "general labor tasks as busting concrete, handling brick, mixing cement and patching materials." I accept the Union's claim that the workers recognize a difference between cement and mortar. But it is also true that the dictionary defines cement to include mortar and, frankly,

there was no testimony that the use of cement, as the Union distinguishes it from mortar, is an ordinary part of the laborer's job. In the context in which it is used, I am satisfied that the word "cement" is broad enough to include the laborer's responsibility of mixing mortar for the brick layers.

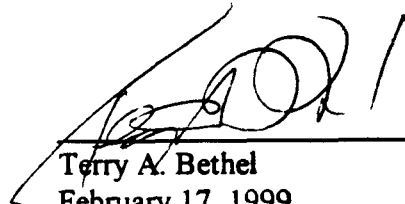
The result, then, is that all of the work performed by employees who assist masons is included in the general laborer job description, except for crane operation. When the Company told those employees that it no longer expected them to operate the crane, it did not create a new job; rather, the employees simply reverted to the laborer position. As explained in the third step minutes, the ladle lining helper job is not a sequential position, but is an assignment position. Thus, when it made the recent change, the Company merely exercised its right not to assign the employees as ladle lining helpers. It may be, as the Union alleges, that the employees continue to perform all of the functions of the ladle lining helper except for crane operation. But I accept the Company's evidence that crane operation was to be the distinguishing characteristic between a laborer assigned to help the masons and a ladle lining helper. The fact that the laborer's job duties overlap with those of the ladle lining helper does not mean that the laborers are entitled to the higher rate of pay, unless, perhaps, the overlap is complete, which is not the case here. Nor does it mean that the Company has created a new job. The Company, instead, has simply assigned laborers to ~~perform~~ work that is clearly contained in their job description.

The ~~employees~~ who were regularly assigned as ladle lining helpers – despite the Company's claim that they were laborers – are entitled to be made whole for the difference between laborer wages and the wages paid to ladle lining helpers. The record is not complete concerning the identity of those employees or concerning the exact time period at issue. Thus, I

will return the case to the parties for discussion of the remedy. If they are unable to agree, they can resubmit the case. The Union's other claims will be denied.

AWARD

The grievance is sustained in part, as explained in the Findings. The Union's request for establishment of a new job under Section 9.6 is denied.



Terry A. Bethel
February 17, 1999