

Background

Prior to his demotion on October 2, 1996, grievant worked as a coil preparer at the INTEK shipping facility at the 80" hot strip mill. In general, the coil preparer inspects the coil and prepares it for rewinding if necessary; otherwise prepares it for shipping; enters data into the computer; and marks the coil for storage. Coil preparers work around the clock, though shipment to INTEK apparently occurs only on day turn. Former section manager Kevin Crary described the process of coil storage and shipment to INTEK, the need to stay ahead of operations there, and the requirement to send coils in the proper lineup. He also described the difficulties caused when a coil is improperly identified or the wrong coil is sent.

Company Exhibit 3 is a listing of nine different incidents of poor performance by grievant between December, 1995 and September, 1996. These are the incidents that led to the demotion. Several of the incidents involved so-called mixed steel, which is when the wrong coil is identified for shipment to the customer. In some instances, the wrong coil was actually sent to INTEK and returned by them. The Company points out that it made significant efforts to reform grievant's behavior. Thus, he was reprimanded after an incident on December 13, 1995; he received a one turn discipline after incidents on December 27 and 28, 1995; he received a two turn discipline for incidents on December 28 and 30, 1995 and on January 11, 1996; and he received a three turn discipline for a mixed steel incident on July 16,

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And

Award 963

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company improperly demoted grievant Thomas Brannon to trackmobile operator from his position of coil preparer in the 80" hot strip mill. The case was tried in the Company's offices on May 18, 1999. 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.....Section Manager, Arbitration and Advocacy
R. Hughes.....Contract Admin. Resource, Union Relations
K Crary.....Section Mgr., Material Management W. J.
Daisy.....Hot Roll Coil Mgt., Shipping & Inventory

For the Union:

M. Mezo.....USWA Staff Representative
T. Brannon....Grievant
E. Carroll....Witness

1996. In August 16, 1996, grievant was given a record review and warned that "continued poor performance ... will put your employment at risk for suspension."

Grievant had another incident of mixed steel on September 21, 1996, a little more than a month after his record review. As explained by the Company's representative at the hearing, the Company elected not to suspend grievant pending discharge because he is a long service employee and, save for his problems in coil preparation, has a good work record. The Company concluded that grievant had not been negligent or deliberately inattentive to his job. Rather, the Company believed that grievant simply was unable to perform at the accuracy level demanded of a coil preparer. Thus, it demoted him to the trackmobile operator position. The parties agree that this is a two-level demotion and that the Agreement countenances only a demotion to the next lowest job. However, the Company claims that the next lowest job - shipping loader - involves the same skills as coil preparer, which grievant has already shown that he is unable to perform. Thus, the Company argues that the demotion to the trackmobile was appropriate.

The Union asserts that grievant's problems were caused in large part because of higher standards being enforced in the department. On cross examination, Crary acknowledged that prior to late 1995, the emphasis had been on productivity and on keeping up with INTEK. However, in October, 1995, the department sent the wrong roll to INTEK, a mistake that ultimately led to a

spindle break. The Company had no spare available and production was down for about a week. According to the Union, this incident was cited as the reason the Company made no operating profit for the quarter.

Although Crary refused to say that a new and higher standard had been imposed on the coil preparers, he did agree that, in late 1995, the Company told the coil preparers that it was going to focus more on mis-marked coils and misidentified steel. As I understood Crary's testimony, the Company had always expected employees to perform at a high level. However, prior to 1995 it had placed more emphasis on productivity than on catching errors. Beginning in late 1995, however, it intended to enforce the standards of accuracy it expected employees to meet.

The Union points out that grievant's worst performance occurred in the first month or so after more emphasis was placed on accuracy. Company Exhibit 3, tendered as a Summary of Performance Issues, indicates that five incidents occurred between December 13, 1995 and December 30, 1995. Crary testified that the Company did not begin disciplining employees for performance problems like these until November, 1995, so these incidents occurred shortly after the heightened scrutiny began. In addition to those five incidents, there was an additional incident on January 11, 1996. However, the Union points out that there were no more problems with grievant until June 23, 1996, a period the Union says is 1634 days, or nearly half a year. Between June 23 and September 21, there were three additional

said grievant had so many more problems than the other employees that he "stuck out like a sore thumb." In one period, for example, there were 18 incidents, a third of which were attributable to grievant. The Union says, however, that mixed steel and misidentification of coils is a recurring problem and that it did not go away once grievant was demoted. The Union speculates that the Company stopped disciplining employees for similar problems after it demoted grievant in order to avoid decimating its force number of coil preparers. And as proof that the problem persists, the Union points out that the Company has recently appointed a mixed steel task force to deal with the problem of mis-marked coils. The Company asserted that, if evidence was to be considered about disciplinary action in the period after grievant's demotion - which it did not realize would be at issue in this case - then the case should be continued so it could research the records.

Discussion

As the Company's representative said in his closing argument, this is a tough case. Grievant has 34 years service with the Company and, apparently, had no significant history of performance problems until the nine or so months prior to his demotion. Moreover, the Company's action in this case would effectively preclude grievant from ever moving up in his sequence since, the Company asserts, both of the higher rated jobs require abilities that he simply does not have. This would mean that,

despite his seniority, grievant would be locked into the trackmobile position.

I think there is merit to the Union's contention that the decision to demote grievant is not merely an automatic step on a progressive chain. That is not to suggest that the Company acted inappropriately when it took disciplinary action against grievant. The Company has an obvious interest in maintaining acceptable performance levels and there is no dispute that disciplinary action can sometimes motivate employees who have performed poorly. The Company concluded here, however, that motivation was not the problem. Rather, it took grievant's repeated problems with mixed steel as an indication that he simply could not do the job. This conclusion is strained, however, when one considered the extended period in which grievant performed the work without incident.

There is no evidence that grievant had any difficulties prior to December of 1995, though the Company credibly asserted that, during that period, performance standards were not strictly enforced, at least with respect to coil identification. It is clear, however, that more accuracy was demanded from the coil preparers beginning in late 1995, whether the actual standards had been increased or not. Thus, grievant was expected to perform at a higher level than he had in previous years. He obviously had problems doing so though the record shows that other employees experienced similar difficulties, albeit not as severe as grievant's. Nevertheless, following the 30 day period

beginning on December 13, 1995 (the first incident cited by the Company), grievant worked without incident from January 12 to June 23. It is simply not possible to conclude that someone who works on thousands of coils for such an extended period is incapable of performing the job.

There is no question that grievant had three incidents in the three month period from June through September. Other employees, however, apparently experienced similar problems. For example, one had one incident in June and two more in August and another had an incident in May and another one in August. Both were disciplined for their performance, as grievant had been. The record does not indicate whether they encountered similar problems after grievant's demotion, though there was no evidence that anyone other than grievant has been demoted. As noted, the Union suggests that the Company stopped disciplining and demoting employees because, given the frequency of mixed steel errors, it could not maintain a sufficient work force if it demoted offenders.

I have not placed significant weight on developments that may have occurred after the effective date of grievant's promotion. There was no reason for the Company to come to the hearing prepared to rebut a Union witnesses' claim that there were not further disciplines after grievant's demotion. The Company's representative correctly asserted that such disciplines were not an issue in this case. The point of the evidence, however, is simply to indicate that the same kinds of errors have

persisted since grievant's demotion, which the Company does not really deny. Indeed, they have continued to cause so many problems that the Company has now addressed them with a task force. This lends some credibility to the Union's contention that these kinds of human errors have always been part of the experience of the job, which is the point the Union really wanted to make.

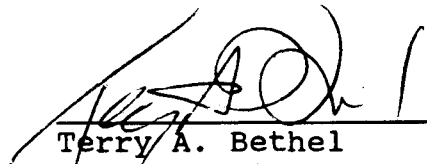
I agree with the standard applied by the Board of Arbitration in USS-5393-S. Because this demotion would effectively freeze grievant out of positions his seniority would entitle him to hold, the Company must present convincing evidence that he is incapable of performing the job of coil preparer. Given the extended period during which grievant performed the job without errors, and the fact that several other employees have made similar mistakes, I am not persuaded that grievant cannot perform the job. I do not say that the numerous errors committed by grievant during the first month of the higher standards were not relevant; but it is reasonable to believe, as the Union suggests, that some employees might have needed time to adjust to a higher accuracy requirement than was in effect for the preceding years. In that regard, it is significant that grievant's performance improved substantially after the initial period. Had the error rate sustained in the first month been continued, my decision might be different.

My conclusion that the Company did not have sufficient reason to demote grievant does not mean that the Company is

precluded from insisting on rigorous performance standards in the future. Obviously, such standards would apply to grievant as well as to other employees in the occupation. There may, then, be some risk associated with grievant's return to the coil preparer position. Nevertheless, I find that the Company did not have cause to demote him and, accordingly, I will sustain the grievance and order that grievant be made whole.

AWARD

The grievance is sustained. The Company will reinstate grievant to the position of coil preparer and make him whole.



Terry A. Bethel
June 27, 1999

Terence A. Bethel, Arbitrator

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June 27, 1999

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Mike Mezo
United Steelworkers of America
1301 Texas St, Room 207
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Re: Award 963

Gentlemen:

I enclose my opinion and award in Inland Case No. 963, which we heard last month.
Also enclosed is my statement for services.

Very truly yours,

Terry A. Bethel

cc: Atul Maharaja
✓ Dennis Shattuck