

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

Award No. 974

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company made certain commitments to transport employees from the gate to the job site after the implementation of in-plant parking in 1992. The case was tried in the Company's offices in East Chicago, Indiana on August 14, 2000. 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 Mgr. of Arbitration and Advocacy
W. Brown.....Planner, Internal Logistics
D. Maravilla.....Senior Staff Analyst, Material Management
W. Stallard.....Retired
J. Van Buren.....Union Relations Intern
K. Brill.....Union Relations Intern

For the Union:

D. Shattuck.....Chairman of Grievance Committee
P. King.....Chairman, Contracting Out Committee
M. Mezo.....USWA Staff Representative
T. Allen.....Assistant Grievance Committeeman
L. Kramer.....Witness
D. Barsic.....Witness

Background

Prior to 1992, most employees drove to the plant, parked in lots outside the gates, and took Company-supplied buses to their work areas. The Company maintained equipment for this purpose and had approximately 30 drivers whose primary responsibility was the movement of employees. As the work force contracted, parking inside the gates became feasible. Staff Representative Mike Mezo testified that when he was Local Union President in mid-1992, a Company official approached him and said the Company wanted to eliminate bus service and implement in-plant parking, but that in exchange it wanted the Union to waive all wash-up time. The Company's position at that time was that local working conditions involving wash-up time were based on the need for employees to get ready to leave in time to catch the bus. Mezo said he refused, even though the official threatened to tell employees that the Local Union had prevented them from obtaining passes to park inside the plant.

Sometime later, Mezo was approached by Wayne Stallard, who was then the Manager of Operating Services. This was not the same official Mezo had spoken with previously. Mezo said Stallard took him through the plant and indicated some of the arrangements that would be made for in-plant parking. Mezo said he raised the possibility that bus service might be a protected

local working condition. However, Mezo said he understood that most of the employees actually wanted to park inside the plant and that he did not really want to prevent it. His principal concern was the elimination of the bus driver jobs. Mezo said he thought raising the past practice issue might help him “posture” into a stronger position to protect the bus drivers. Mezo said he also told Stallard that he was concerned about the employees who didn’t drive to the plant, but walked or rode city buses, or arrived there through some other means. These people, he said, would still need a way into the plant and, he suggested, the bus service might be a local working condition for them.

Mezo said Stallard responded that those people should do their best to get a ride into the plant with a coworker, but that if they could not, they could call the garage and “we will dispatch a bus.” Mezo said he voiced a concern that this system would make people late and Stallard replied that the Company would dispatch the bus within ten minutes of the call. Mezo said he understood the deal to be that the Union would not fight the elimination of the bus drivers if the Company would make bus service available to the employees who needed it. He said that the deal was reinforced after Stallard retired in late 1992. At some point, an employee complained to Mezo that he had lost his license and that when his wife dropped him off at the gate, the Company refused to pick him up and transport him to his work area. Mezo said he called Stallard who said the Company had made the commitment to do so, that he would call Don Maravilla (the current manager) and take care of the matter, and that Stallard did so. Mezo said there were other such incidents, though this was the only time he talked to Stallard. The instant case arose when the Company allegedly refused to provide transportation to certain employees.

Stallard testified that he could remember only one conversation with Mezo during which he made a commitment to provide transportation for employees who had no way to get from the gate to their work area. But he said it was “ludicrous” to suggest that he made a commitment to do so within ten minutes. All of the remaining truck drivers had assignments and the department had neither the equipment nor the employees available to provide a guaranteed ten minute service. This would have required having both equipment and employees on call for several hours a day solely to service the needs of a very small group of workers. He said the department was simply not capable of doing that. Indeed, on cross examination, Stallard said he could not even have guaranteed that his employees could respond to an emergency situation in the plant within ten minutes.

Dom Maravilla, Senior Staff Analyst in Materials Management, was not present for the conversation between Mezo and Stallard. However, he echoed Stallard’s testimony about the department’s ability to respond to employee requests for transportation. He said the department’s policy has been for the department to furnish transportation “as best they could,” but not within a ten minute window. He said the Company did not retain the equipment to do that and that all equipment and drivers were regularly assigned to other tasks. His policy, he said, has been to pick employees up when a driver became available, though the plant needs had first priority.

Similarly, William Brown testified that he has tried to arrange pick ups as soon as possible, but that the Company has not taken people off routes to pick up employees. He also said that the department had not had a request for transportation for the four years prior to the hearing.

In addition to Mezo, the Union called three other witnesses. Two were employees who had requested rides prior to the time the grievance was filed. Both employees drove to work but

they refused to drive into the plant because of a controversy over damage to their cars. In response to my inquiry, the Union agreed that the damage issue is not present in this case. Nor is there any issue in this case about whether employees can drive to the plant and still demand bus service. This case is limited to the issue of whether the Company obligated itself to transport employees who have no other way to get from the gate to their work area. The Union points out, however, that no one asked either of the employees whether they had driven to the plant. Thus, the Union says that as far as the Company knew, both employees had no other way of reaching their work area and the Company still denied service. The Company says this is evidence that the Company never made any agreement concerning transportation.

The Union also called Phil King, Chairman of the Contracting Out Committee. King said he talked to Stallard about his plan to implement in-plant parking six months to a year before it actually happened. King said he asked Stallard about people who did not drive to work and Stallard replied that he would provide bus service for that group. However, King did not testify that Stallard said he planned to offer such service on any sort of schedule. In particular, King did not testify as to any ten minute commitment.

The Company claims that there was no agreement in this case but, it says, even if there were, the matter has already been settled. The Company points to a grievance filed in 1992, which protested the implementation of in-plant parking as "unjust." The Union withdrew the grievance in 1995. The Company says the matter at issue in the instant arbitration is the "same situation" and that the Union, therefore, cannot bring it up again. In the alternative, the Company says the conversation between Mezo and Stallard created no obligation to provide transportation and that even if Stallard tried to do so, there was no consideration for his promise. Finally, the

Company says if there was an agreement, it is now unenforceable because of the doctrine of laches.

In its closing, the Union said the case was about whether the Company made a commitment, and not about the ten minute requirement. Even if there was no commitment to pick up employees within ten minutes, there was at least an agreement that the Company would pick up employees “as circumstances allow.” The Union also said that the Company could try and encourage employees to seek other methods of getting into the plant, but that “as a last resort,” they had the right to call for a ride. The Union said this was true even though the employees might be “putting themselves at risk” to rely on Company transportation. I understood this to mean that the Union understood that the Company might not be able to deliver employees to their work areas on a timely basis.

Findings and Discussion

There is no merit to the Company’s claim that Stallard and Mezo did not reach agreement in this case. Stallard forthrightly acknowledged that he made an agreement with Mezo to provide transportation service to employees who did not otherwise have a way to travel from the gate to their work area. The only contested issue in the case is whether Stallard’s agreement included a commitment to dispatch a bus within ten minutes of an employee’s call for a ride. Based on Stallard’s and Mezo’s testimony, I find that there is no question that the Company assumed an obligation to provide transportation. However, I also find that the evidence is not sufficient to establish an agreement to do so within ten minutes. And, frankly, the Union’s final argument suggested that the ten minute issue was not its principal concern.

I also find no merit in the Company's other defenses to an agreement to provide transportation. This is not a situation in which the parties tried to amend the terms of the Basic Agreement. It is true, as the Company points out, that Award 971 said that such an amendment requires more formality than the parties observed in this case. But that decision does not foreclose the parties from entering into informal agreements of the sort at issue here. Moreover, the Company's contention that there was no consideration for the agreement is without merit. I need not resolve Mezo's contention that labor contracts do not require consideration, though I suspect what he really meant was that there is no requirement to specify what items have been traded for each other in the context of a multi-faceted bargain. Here, however, the Union pointed to a specific exchange. The Union said it understood that it traded away any ability to contest the elimination of the truck drivers' jobs for the Company's commitment to provide transportation. In addition, it said it understood that the Company agreed to provide transportation in exchange for the Union's support in the implementation of in-plant parking. Either exchange would suffice as consideration. There is no requirement that the items traded be of equal or even of tangible value.

I also find that there is no merit to the Company's claim that the settlement of the prior grievance ended this case. That grievance related to the general issue of in-plant parking. The Union's decision to withdraw it is not inconsistent with its claim in this case that the parties made a side agreement to supply transportation to a limited number of employees. Thus, the instant claim would be affected by the withdrawal only if it made specific reference to the matter at issue here. Finally, the Company's laches defense is without merit. Laches applies in cases in which one party has sat on its rights. But there is no evidence of that here. Indeed, there is no evidence

that the Company ever refused to provide transportation (without subsequently recanting) until the incidents giving rise to this case. The fact that the Company has not provided transportation for the past four years is meaningless in the absence of evidence that employees asked for it, that the Company refused to provide it, and that the Union did nothing. There is no such evidence in this case.

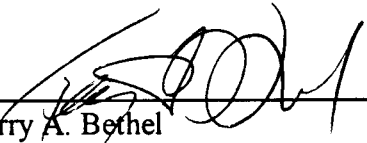
I turn now to the parameters of the agreement between Stallard and Mezo. Stallard said unambiguously that he agreed to provide transportation to employees who could not otherwise get to their work area. That does not necessarily mean that employees can drive to work and then park outside and call for a ride, though whether there is such an obligation based on some other circumstances is not an issue in this case. Stallard said employees who have no car could call the garage and someone would pick them up. There must have been some mention of ten minutes in the conversation between Mezo and Stallard, perhaps as an estimate of timing, since Mezo's testimony about a ten minute conversation was credible. However, I am unable to find that Stallard guaranteed the Company would dispatch a bus within ten minutes. His testimony that it would have been impossible to make such a commitment was also credible. Moreover, it makes little sense to think that the Company would agree to keep drivers and equipment on standby for bus service when the Company's principal purpose was to end the bus service. I find, then, that an obligation to furnish the service within ten minutes was not part of the agreement.

Because there are no instances of refusal at issue in this case, I will not speculate about the extent of the Company's obligation. Stallard said only that the Company had agreed to provide transportation. Maravilla said the Company had provided rides "as best we could" and "as soon as reasonably possible," though the first priority was the plant. Brown said the Company tries to

take the "first available driver." In its closing argument, the Union's representative characterized the service as available in the "last resort" and said that the Company should pick up employees "as circumstances allow." I find that the Company is required to furnish transportation and that it made no commitment to do so in ten minutes. Should disputes arise concerning the timeliness of transportation, they will have to be resolved on their facts.

AWARD

The grievance is sustained to the extent indicated in the Findings.



Terry A. Bethel
September 10, 2000

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