
In the Matter of Arbitration Between:)
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Ispat Inland Steel Company))
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and))
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United Steelworkers of America))
Local Union No. 1010.))

Gr. No. 27-W-09
Appeal No. 1589
Award No. 978

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on December 14, 2000 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Shattuck, Chairman, Grievance Committee

Witnesses:

- L. Aguilar, Grievance Committee Vice-Chairman
- D. Shattuck, Grievance Committee Chairman
- L. Mosely, Griever
- D. George, Grievant
- G. Thomas, Electrical Technician

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration and Advocacy

Witnesses:

- J. Jones, Section Manager, Electrical Maintenance
- W. Johnson, Section Manager

BACKGROUND:

This is a grievance over seniority rights. The Grievant is established as a Standard Motor Inspector in Plant 4, also referred to by the Parties as a standard electrician. On the week of November 7, 1999 the Grievant was taken off his day turn assignment and scheduled to work on a turn crew, i.e. on one of the rotating shifts. The Grievant alleged that his seniority was violated because two junior employees were scheduled to work the day turn during that week. Of the two junior employees, Mr. S. Williams, Sr. was scheduled to work as an Electrical Technician and Mr. M. Pentek was scheduled to work as a MECO (Mill Electrical Control Operator). These two positions are considered "above-craft" positions with regard to the Standard Motor Inspector position.

The Grievant filed a grievance over this scheduling arrangement, claiming that there was no distinction between the different crafts in the same sequence other than seniority. The Company denied the grievance on the grounds that the Company always schedules a standard electrician and above-craft electrician on these crews, for the reason that the above-craft electrician is more skilled because he or she has been tested and qualified for a higher level. In addition, the above-craft electrician can direct the standard electrician. The Company contended that in the past the Company always has distinguished between these groups.

Mr. J. Jones, Section Manager of Electrical Maintenance, testified that electricians take rigorous tests to become MECO's or Electrical Technicians. Once an employee passes each exam he is considered "MECO-qualified" (MQ) or "Tech-qualified"(TQ), available to fill a MECO or Electrical Technician vacancy if one is available. There are large areas of overlap in the duties among the three classifications in issue here. The Electrical Technician job is rated Job Class 24,

and one must pass the MECO (Job Class 20) test in order to take the Electrical Technician test. The tests are difficult to pass, and the tests for Plant 4 are department-specific, i.e. they require a great deal of knowledge about the equipment in Plant 4, much of which is gained on the job.

The Section Manager testified that if there is a vacancy for a Standard Motor Inspector the vacancy is filled with a Standard Motor Inspector and if there is a vacancy on an Electrical Technician position, it is filled with an Electrical Technician, or someone who is Tech-qualified. The Witness said that if there is a MECO vacancy, for example, he takes into account shift preferences, but if the job cannot be filled, he may assign the most junior MECO to fill it. He presented a document listing eleven weeks from 1993-1998 where junior Technicians were assigned on day shift when senior Motor Inspectors were assigned on turn crews. He said that this was just a sample of many more weeks which would show the same pattern. He testified that Management may choose the number of Techs or MECO positions on any given turn, if there is work there to support the position. The Company may decide to schedule a certain number of above-craft employees because either their technical or supervisory/planning skills may be needed. He also said that he cannot pay employees above-craft rates solely based upon their knowledge -- employees must pass the test(s) to become MECO or Tech-qualified.

On cross-examination, the Section Manager acknowledged that part of the reason for the large number of junior Technicians working day shift while senior Motor Inspectors worked turns, was because Plant No. 4 chose to fill the position of "Inspector" only with Technicians. The "Inspector" position is different from the Motor Inspector classification; employees are required to routinely check equipment for potential problems. The Witness acknowledged that

this situation was changed throughout the Company in 1997 when the Parties agreed that the "Inspector" position would not be an above-craft position.¹

The Witness testified that the Grievant definitely could not have performed the work performed by the most junior employee, Mr. Williams, during the week in issue. He said that Mr. Williams performed Programmable Logic computer work, for which he is highly-skilled. He conceded that not all employees who are qualified as Technicians could perform this work. The Witness testified that he needs someone to perform this work and if an employee had the skills to do it, but was not MECO or Tech-qualified, he would pay the employee at the Motor Inspector rate. He acknowledged on cross-examination that above-craft employees are assigned a variety of tasks throughout the day, some of which would be the same tasks as those assigned to Motor Inspectors. On redirect he stated that although there is a lot of overlap between what a Motor Inspector and an above-craft employee actually do, the Company expects a higher level of skill from the above-craft employees. If a Motor Inspector is assigned to a job and does not know how to do it, a MECO is called, and if the MECO does not know how to do it, an Electrical Technician is called.

Until August of this year there was an agreement that Electrical and Mechanical Technicians would be paid at the Technician rate, no matter what they were doing. That agreement no longer exists, but there is a similar agreement in existence at this time covering MECO's.

¹ The Company agreed that Technicians would continue to be paid at the Technician rate for performing the Inspector job until August, 2000.

The Section Manager for the 12" Bar Mill testified that the primary differences between the job descriptions of the Motor Inspector are the level of voltage each can handle and the fact that the above-craft positions can supervise the Motor Inspectors, while the Motor Inspector can only supervise the apprentice position, the Vocational Motor Inspectors. The above-craft tests examine not only technical knowledge, but the ability to lead others as well.

The Witness testified that he supervised Mr. Pentek at the 12" Mill during the applicable period. He said that some of the work Mr. Pentek performed was Motor Inspector work and some of the work he performed was above-craft. The Witness testified that he wished to have Mr. Pentek's skills available in case certain situations arose. The Witness explained that he schedules one Motor Inspector and one above-craft employee on each turn. He testified that for many years he has filled Technician slots with Technicians, MECO slots with MECO's and Motor Inspector positions with Motor Inspectors, by seniority within each classification.

On cross-examination the Witness acknowledged that although there is a difference in the skill level between MECO's and Electrical Technicians, he schedules them interchangeably. He said this was because they have a higher skill level than Motor Inspectors and can direct them. He also acknowledged that *Motor Inspectors lead and teach Vocational Motor Inspectors and that all three classifications perform troubleshooting*. He said, however, that above-craft employees generally diagnose a problem sooner than Motor Inspectors.

The Union presented a document showing a local agreement entered into in 1977 in which the Company agreed to permit employees to claim steady day turn assignments, if they so request, on the basis of seniority. The Vice Chairman of the Grievance Committee stated that the Union sought this agreement because *Management had been assigning whomever they wished to these*

assignments. He said that employees felt strongly that steady day turns should go to the most senior employee. A dispute arose over what was a steady day turn assignment, the Witness testified, leading to a 1989 agreement that "any temporary day turn assignment will be given to the most senior incumbent not working steady days in the craft sequence involved who has applied for steady day-turn assignments."

The Union also introduced Third Step Minutes from a 1991 grievance similar to the one at issue here, only with regard to the Mechanical rather than the Electrical sequence. There the Company took the position that the primary difference between the Mechanical Technician and the Mechanic Standard's typical duties are "planning, instructional, developmental and supervisory elements." According to the Third Step Minutes, the Company argued that "as long as the planning, instructional, developmental and supervisory functions are needed, the mechanical technicians are properly scheduled." The Union withdrew the grievance after the Third Step. On cross-examination the Witness acknowledged that the work involved in that grievance was "firewatch." The Parties indicated that "firewatch" can be performed by any employee, since the job involves only watching for fires in the mill and notifying the proper authorities if necessary.

The Vice Chairman of the Grievance Committee testified that in general employees are not paid on the basis of the skill level they possess, but rather on the basis of the duties they are performing. He said he had been told by a Griever from another department that there was an agreement there that employees qualified for a higher position are paid at the higher rate, regardless of what they are doing, but the Griever noted that that is the exception.

The Chairman of the Grievance Committee, who was the Griever for the Grievant's department from 1979 to 1994, testified that in 1989 there were four (4) Electrical Technicians,

11 MECO's, and 28 Motor Inspectors. By 1994, the proportions had shifted: at that time there were 15 Electrical Technicians, seven (7) MECO's and 13 Motor Inspectors.² He said that he believed that the shift occurred because Management adopted the philosophy that the Inspector position should be filled with a Technician, who could not only find a problem but also organize and plan the repairs and direct the repair forces to correct them. The Chairman testified that in general the Union had no objection to Management using the Technicians in this way because this was a Technician assignment. This changed in 1997, however, when the Company decided that it was no longer necessary to staff the Inspector job with Technicians. Now there was a large body of people in the Technician classification who no longer had an identifiable Technician position. The Company agreed to pay these employees the Technician rate until August of 2000. Employees now rotate through the Inspector assignment. On cross-examination the Witness stated that the Company could determine that there is a need for more Technician positions, as long as there is Technician work to perform.

The Griever for Plant No. 4 testified that he spoke to the employees in the department and even the Techs and MECO'S reported that all the employees are basically performing the same general duties in the jobs in question. He acknowledged on cross-examination that as a Mechanic he does not use all of his skills and knowledge every day. He also acknowledged that there is a significant amount of overlap among the duties of the three jobs in issue here.

The Grievant testified that he had tried to take the test to become a MECO as of January of 2000, but was told that there was not a test in existence at the moment. He said that he still

² The Company presented evidence that there are currently 32 employees in the electrical sequence at Plant No. 4 -- 10 Electrical Technicians, 8 MECO's, 12 Motor Inspectors and 2 apprentices.

has not taken the test. He has 27.5 years in the electrical sequence, and he has never requested to take the test prior to this instance. He said that some Motor Inspectors know more than Technicians, but do not take the test because they do not want to direct other employees. On a daily basis, he explained, work orders come down and the foreman determines whether a Motor Inspector, MECO or Technician will perform the work. He said that often the above-craft employees are not required to direct Motor Inspectors on a job; it is not uncommon for there not to be even one Motor Inspector assigned to the day turn. He acknowledged that he is not skilled in Programmable Logic like Mr. Williams. On redirect he said that other employees have knowledge of other equipment, and he has never been told that he will be paid on the basis of what he knows.

The Union presented an employee who has been an Electrical Technician for 9 years. He examined a list of jobs which were performed on day turn during August and September of 2000 and testified that all of them could have been performed by a Motor Inspector. The Witness testified that Management would assign these jobs to different employees, Motor Inspectors and above-craft employees. He said that there is no requirement that employees who are Tech-qualified keep up their skills, once they have passed the test.

On cross-examination the Witness acknowledged that he had to learn the equipment inside and out in order to pass the Electrical Technician test, and that it is not uncommon for employees not to pass the test on their first try. He conceded that the Company has a right to expect more from him than from a Motor Inspector, and that sometimes Motor Inspectors come to him when they have a problem. On redirect examination, the Witness said that when he has worked day turn he is not usually given a crew of people to direct. Normally he is assigned to the turn with

one Motor Inspector, and the Motor Inspector performs different assignments from him independently.

THE UNION'S POSITION:

The Union argues that in 1977 the Parties agreed that steady day turn assignments would go to the senior employee who put in a request for such an assignment. In 1989 the Parties extended that right to include temporary day turn schedules under this agreement. The Union argues that the long-term practice in this department has been to fill the turn schedule and then to schedule all remaining employees to day turn -- these jobs are all temporary steady day jobs. The Grievant had properly requested to fill such vacancies, but was denied that opportunity during the week in question.

The Union argues that if the junior employees in question were working as Technicians or MECO's they would have an absolute right to fill the vacancies in those positions. However, the Union argues that these employees were functionally acting as Motor Inspectors, not as Technicians or MECO's. The craft position is a "pay for knowledge" position, the Union argues; having passed the test, the employee receives the rate, no matter what he is doing. However, the MECO and Tech positions are "position-rated;" employees are paid as Technicians or MECO's only if they are working in that position, according to the Union. Simply because the Company paid the employees at the Technician or MECO rate does not mean that the Company may ignore the legitimate seniority rights of the Grievant, the Union contends.

The underlying question here, the Union asserts, is whether there was a vacancy in the MECO or Tech occupation. *The Union argues that the evidence shows that there was not such a*

vacancy. The Union would be happy to have the Company pay employees for their level of knowledge, rather than for the duties they perform, as is done in some departments. But that is not how the procedure works in Plant No. 4. The Union argues that the Company cannot have it both ways -- i.e. have the option not to pay Technicians the Technician rate, by scheduling them as Motor Inspectors, but also to schedule them as Technicians when they are really performing Motor Inspector work, thereby denying the seniority rights of some of the Motor Inspectors. Here the senior employee was denied the right to work days, while a junior employee performed work which the senior employee could perform. The Union argues that the evidence shows that the majority, if not all of the work being performed on day turn is Motor Inspector work.

The Union concedes that it is difficult to draw a clear line between craft and above-craft duties in this case, but argues that it can be done, as the Company has done in the past, by recognizing that the above-craft duties are planning, instructional, developmental and supervisory functions. The Company has not shown that these functions were required or utilized here. In many situations there are no Motor Inspectors to supervise or instruct.

The Union argues that it is not estopped from making this argument because of past scheduling. Originally above-craft employees were scheduled on the turn crews, and this situation did not arise. Then the Company decided to use only Technicians for the day job of Inspector, and the Union recognized that Motor Inspectors could not claim that position. This situation did not arise until the Company decided not to use only Technicians for the Inspector positions, and suddenly there were a lot of Technicians without steady day turn jobs. Therefore the fact that the Union has not protested the scheduling of junior above-craft employees over senior Motor Inspectors is not controlling, in the Union's view.

The Company has failed to establish that there was an above-craft vacancy here. While this may not appear to be the most important seniority right, the Union argues, it has larger ramifications. The Grievant's seniority rights during reduced operations, for example, may be endangered. As a remedy, the Union is requesting only a cease and desist order, not a monetary remedy.

THE COMPANY'S POSITION:

The Company argues that Management has the right to determine the composition of maintenance crews for the assignments. In this case Management of Plant 4 decided to schedule on each turn one above-craft employee and one Motor Inspector, the same schedule for the other turns that week, and the same schedule used for many turns. For the week in question there was a vacancy in the Motor Inspector position and it was filled by the Grievant as the most junior Motor Inspector. The other two employees to whom the Grievant compares himself were scheduled as a MECO and a Tech.

The Company acknowledges that Management may not be exploiting the full skills of a MECO or Technician at any given moment. However, the Company questions whether the Union really wishes to have the junior employees here scheduled as Motor Inspectors. The Company often does not use all of the skills of other craft employees either, and questions whether the Union really wishes to have all craft employees assigned as Laborers, or to be paid their craft rate only when they are fully utilizing their craft skills. Instead the Company routinely schedules pays craft employees their craft rates, even when they are not using the full complement of their craft skills. The Company also schedules employees as above-craft employees when

Management expects that above-craft skills may be required. The Company may schedule MQ and TQ employees as Standard Motor Inspectors; however, as long as the Company schedules them as MECO's or Techs, then Management can expect them to perform as MECO's and Techs and schedule them according to their standing in those positions.

The Company argues that the Grievant would not have been able to fill the positions filled by the two junior employees here. He had not taken the MECO or Tech tests, although he had the opportunity to do so over many years. One of the employees was working in a special assignment, for which the Grievant did not have the knowledge or skill.

The Company analogizes the situation to hiring an attorney for a simple task, over *someone in the mill who might have some legal knowledge or ability. Even though the lawyer* may not be using extensive legal knowledge to perform the task, the lawyer is licensed and may be expected to perform the full range of lawyer's duties, as compared with the non-lawyer. At any given moment an above-craft employee might be performing nothing more than Motor Inspector duties. However, the Company can expect that employee to perform the full range of tasks for which they are qualified. The Company can expect more skill and responsibility out of the MECO or Technician than from the Motor Inspector.

FINDINGS AND DECISION:

In the instant grievance the Union contests the assignment of two employees with less seniority than the Grievant to the day turn for one week in November, 1999. The Union has cited several provisions of the labor agreement, as well as the steady day pick agreement and the agreement on filling temporary steady days. The sections of the labor agreement relied upon by

the Union here establish the general principles of seniority in this bargaining relationship. Article 13.1 states,

The Company and the Union recognize that promotional opportunity, job security when decreases of forces takes place, and reinstatements after layoffs should merit consideration in proportion to length of continuous service. It is also recognized that efficient operation of the plant greatly depends on the ability of the individual on his/her particular job.

Article 13.4, also relied upon by the Union, establishes "ability to perform the work" as one of three elements in the definition of seniority, along with length of continuous service and physical fitness. Article 13.6 states that where ability and physical fitness are relatively equal, "length of continuous service...shall govern."

The choice of a shift is not one of the items mentioned in Article 13.1 to which consideration of seniority applies. However, the Union also cites the steady day agreements as applicable in this case. These agreements provide employees the right to work day shift, if they so desire, based upon their seniority. *The Company stated in the Third Step minutes that the assignments at issue here were not made pursuant to the steady day pick agreement and that employees have no right to select their shift under the contract.*

The evidence shows that the Union has not objected generally to Management's decisions regarding which classifications make up scheduled crews. The Union also concedes that if the junior employees in this case were filling positions as an Electrical Technician or as a MECO, then the Grievant would have no claim to the assignments in question. The Union argues, however, that because the junior employees were not really working in above-craft positions, the Grievant here had a right to one of the day turn assignments they held. Thus, the crux of this case, in the

Union's view at least, is whether the above-craft employees were in fact performing above-craft duties during the week in question.

There was very little evidence about what work was performed on day shift during that week. There was evidence concerning special computer work performed by Mr. Williams. The duties he performed are outside the scope of the normal duties performed by any employees in this sequence, regardless of their rating. Therefore it is not particularly helpful to examine his duties in order to determine the outcome of this dispute. There was no other specific evidence about the work performed during the week in question.

The evidence shows that specific duties on day turn change from week to week, and that Management makes decisions about which jobs will be performed by above-craft employees vs. Motor Inspectors. The Union presented testimony that generally there is no real difference between the work performed by the three classifications at issue here on the day turn in Plant No. 4. In support of this point, the Union presented a list of jobs performed during weeks in August - September, 2000, which Union Witnesses said could have been performed by employees in any of the three classifications.

The Parties agree that there is a substantial overlap in duties among the three positions in this case. The evidence shows, however, that there are some duties which are the province of the above-craft employees alone, particularly the supervising of Motor Inspectors. The Union offered evidence that Motor Inspectors sometimes are not assigned to day turns and when they are, often work on projects by themselves, without any supervision from above-craft employees.

The Company argues that even if an above-craft employee may, at any given time, be performing a duty which might also be performed by a Motor Inspector, the Company may expect

more expertise, skill, and responsibility from the above-craft employee in the performance of that duty. Several of the Union's Witnesses suggested that a Motor Inspector may have equivalent or greater expertise or skill than a higher-rated employee, with regard to a specific duty. This argument has some merit. However, there is no dispute here that employees must pass rigorous tests, based upon their knowledge, expertise and skill, in order to obtain the above-craft ratings. It is also clear from the evidence that Motor Inspectors consult with above-craft employees on problems they cannot handle. Company Witnesses presented testimony that above-craft employees generally can diagnose a problem faster than Motor Inspectors.³ It is reasonable for the Company to consider that above-craft employees *generally* have greater skill and expertise than the Motor Inspectors, and to schedule them on certain turns when it expects to need these skills or knowledge.

The Company may not, however, routinely schedule above-craft employees as Technicians, without regard for the duties they actually perform or the seniority rights of the Motor Inspectors. The evidence does not establish that the Electrical Technicians in Plant No. 4 work on a "pay for knowledge" basis. Thus, even if they bring a higher level of skill to any duty they perform, there must be a need for that level of knowledge or skill in the duties performed, if a Technician is to be scheduled week after week.

With regard to any particular week, however, the Company may expect to need such skills and then find, at the end of the week, that they had not been needed. It is not reasonable to

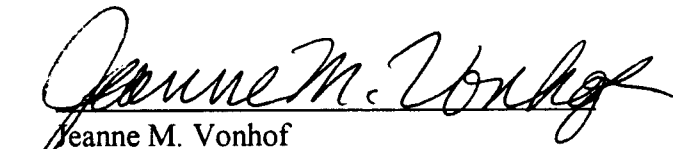
³The Grievant may have much of this skill and expertise, as a result of his long years of experience. However, he could have taken the qualifying tests for the above-craft positions years before the grievance was filed, in order to obtain the qualifications necessary to command the higher pay rates.

require the Company to know for certain, at the time of scheduling on a particular week, whether the above-craft skills definitely will be needed. But the Company may not, week after week, assign the Technicians to perform work which could be done by Motor Inspectors, without any realistic expectation that a higher level of skill or knowledge is necessary.

It is not clear, however, that that is what occurred in this case. The Union's documentary evidence here does not address who was assigned a particular job. It does not establish, for example, that the same job was assigned one week to a Motor Inspector and the next week to an above-craft employee. Based only upon the generalized testimony from the Union's Witnesses, the Arbitrator cannot conclude that the junior above-craft employees here were engaged only in Motor Inspector-level duties on day turn on the week grieved by the Grievant, or that this was a routine occurrence. Therefore, there is not sufficient evidence to sustain a grievance concluding that the Grievant's seniority rights were violated.

AWARD:

The grievance is denied in part. There is not sufficient evidence to conclude that the Grievant's seniority rights were violated for the week in question. However, the Company may not routinely schedule above-craft employees on day turn, without regard for the actual duties they perform.



Jeanne M. Vonhof
Labor Arbitrator

Decided this 7th day of May, 2001.

Issued Under the Authority of Umpire Terry A. Bethel