

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 986

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated the Agreement when it assigned RC Operators to perform the work of hostlers and when it refused to post vacancies in the hostler sequence. The case was tried in the Company's offices in East Chicago, Indiana on May 14, 2001 Pat Parker represented the Company and Darrell Reed presented the case for the Union. The parties submitted the case on final argument.

Background

In Inland Award 866, I sustained a grievance in which the Union protested the Company's action in reducing the number of hostlers and assigning some of the work performed by hostlers to RC Operators. At the time of Award 866, there were five employees in the hostler sequence, although the grievance protested a reduction from eight to five. Evidence presented in the instant case indicated that in 1992, there were 32

locomotives and 4 slugs, all of which required the fueling and sand services performed by hostlers. That number reduced over the next nine years so that, by the time of the hearing, there were only 17 locomotives remaining. Similarly, between 1995 and the year 2000, the number of employees in what is now the Train Operator sequence reduced from 134 to 78. The number of hostlers likewise reduced until, by the time of the hearing, none remained in the sequence.

There were 8 hostlers established in the sequence in 1992. One transferred in 1995, two others left the sequence in 1996, two left in 1997, and the remaining three left in 2000, with the last one retiring in August, 2000. Nikola Sucevic, the Planner for Rail Operations, testified that the hostler is generally responsible for replenishing the consumables in the locomotive, including fuel, sand, and lubricants. He may also be required to move the locomotive from one place to another, sometimes for maintenance. He said RC operators also perform all of these tasks. Sucevic said no hostlers have come into the sequence since at least 1992 and that several have left, as outlined above. As they left, he said, their traditional work was performed by RC operators, who also filled in for the hostlers when they were off work or on vacation. He said the Union had not challenged this gradual shifting of work between 1992, when Award 866 issued, and the instant grievance, which was filed in May, 2000.

Union witness Cornelius Kerr is an RC operator. He said the Company posts job picks for the RC operators each month and two of them involve performing hostler duties. Kerr has taken this pick on a number of occasions and he said he spends about 95 to 98% of his time on hostler duties. This has been going on for about a year, he said, since an employee named Hermosillo transferred out of the hostler sequence, leaving only one remaining hostler, who has since retired. Kerr agreed with Sucevic's testimony that the RC operators did not grieve until May, 2000, but he said that was because RC operators generally were not assigned significant hostler duties until that time. There were occasional assignments to the RC operators, but prior to 2000, there were three hostlers and they were able to handle the work load on the locomotives still in operation. RC operators began performing the hostler job on a nearly full time basis, however, after the last hostlers left the sequence. On cross examination, Kerr acknowledged that even when there were still three or so hostlers in the sequence, he or other RC operators sometimes replaced the hostlers when they were off sick or on vacation.

The griever for Area 26 said he thinks there is hostler work available for three employees. He also said that as long as 12 or 13 years ago, he sometimes filled in for hostlers when they went on vacation or called in sick.

The Company says it is improper for the Union to bring this grievance protesting the loss of work for employees in a

sequence, because there are no employees left in the hostler sequence. A jurisdictional case, it argues, cannot be brought by employees who have duties added to their job. The Company also says that even if this were a jurisdictional case, the Union cannot meet its burden of proof because the evidence established that the RC operators have been slowly assuming the hostler duties and that they have done so without complaint from anyone, including the hostlers, when there were such employees in the sequence. The Company also argues that Article 1 obligates the parties to work cooperatively and that Appendix TT allows the Company to capture the benefits of attrition, which is what occurred in this case. The Company also says the Union has not proven the quantity of work that continues to exist.

The Union says the hostler job still exists, which is clear from the fact that the Company posts two picks for those duties every month. If it could not assign the hostler duties to the RC operators under the conditions existing at the time of Award 866, the Union says, then it cannot do so now. The Union acknowledges that there has been attrition, but it says that does not allow the Company to eliminate a sequence.

Findings and Discussion

In Inland Award 866, I found that the hostlers had performed the work of servicing the engines with reasonable exclusivity, and that the customary response in the mill when an engine needed servicing was to call a hostler, with a few exceptions not

sufficient to undermine the hostlers' claim to the work. In this case, the Company says that the hostlers' exclusivity had been eroded by attrition in the hostler sequence and the contemporaneous assignment of hostler duties to the RC operators. The record, however, does not support that argument. There is no doubt that the number of hostlers was reduced in the years between Award 866, decided in 1992, and the time of the grievance in the instant case. But the number of locomotives was reduced, too, and there is no evidence at all that the number of hostlers remaining in the sequence before the year 2000 could not handle the work load.

In 1992, there were 32 locomotives and 4 slugs, which apparently took as much servicing as a locomotive. The record does not reveal the number of locomotives remaining in May of 2000, but by the time of the hearing in May, 2001, there were only 17. A Union witness testified credibly that no one grieved that hostler work was being assigned to RC operators because it was not being assigned to them in significant quantity until May 2000, when Hermosillo transferred. This left only one hostler in the sequence, who retired only three months later. At about the time of Hermosillo's transfer, the Company started assigning RC operators to do hostler work on a virtually full time basis, and this was when the Union grieved.

The Company's witness testified that there was a "gradual shifting" of work from the hostler sequence to the RC sequence. However, that characterization actually was suggested by the

question itself and the witness offered no details about the amount of work required, or about the ability of the remaining hostlers to do it, at least until after Hermosillo's transfer out of the sequence. He did not say that RC operators had serviced their own engines before May, 2000 or that RC operators had been assigned to work as hostlers before that time, except for occasional vacation relief.

I find, then, that there was no significant transfer of duties until just before the grievance was filed in this case. The Company cannot point to the actions protested in this case as evidence that undermines the right of the hostler sequence to this work.

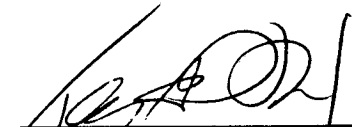
Nor is the Company correct when it claims that the grievance is improper because there are no longer any hostlers in the sequence. That is true today, but it was not true at the time the grievance was filed, which is the appropriate time to consider. The Company's argument may go to remedy, but it does not establish that the grievance itself is improper. I also reject the Company's claim that the Union did not prove the quantity of work available for hostlers. The evidence established that each month, the Company assigns two RC operators to act as hostlers (apparently, they are even called hostlers) and that they spend 95 to 98% of their time performing hostler duties. This is sufficient to establish that there is ample work available for two employees as hostlers. The record does not

support the Union's claim that there is enough work for three hostlers.

I find that the hostler sequence has the right to the work of servicing engines as outlined in Award 866 and that the Company may not assign this work to RC operators, as it has done in this case. I will, then, order to the Company to stop assigning hostler duties to RC operators. If it is to have those duties performed, the Company will have to fill the vacancies in the hostler sequence. No monetary remedy is appropriate in this case.¹

AWARD

The grievance is sustained as indicated in the last paragraph of the Findings.



Terry A. Bethel
June 1, 2001

¹ The Company asks me to take account of the parties' pledge of cooperation in Article 1. I understand the impetus for that agreement, as does anyone involved with the steel industry at this time. However, I do not understand how the parties' agreement to work cooperatively can be enforced in the context of this arbitration. Nor does it appear to me that Appendix TT and its emphasis on capturing attrition is applicable to this case.