

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 988

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns a dispute between the parties about the proper way to characterize the Company's decision to shut down no. 5 blast furnace for 53 days in February, March and April of 2001. The case was tried in the Company's offices in East Chicago, Indiana on July 16, 2001. Pat Parker represented the Company and Bill Carey presented the case for the Union. The parties submitted the case on final argument

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy
A. Goldfarb....Mgr., Financial Accounting and Services
L. Alberti.....Gen. Mgr., Operations Planning
E. Perry.....Dir. Of Op., Fin. And Admin., IIBC
N. Hubble.....Major Projects Mgr., Plt. 2 BF
J. Mastervich..VP Operations, IHW, President IIBC
S. Strange.....Student Intern, Union Relations

For the Union:

B. Carey.....International Representative
D. Shattuck.....Chairman, Grievance Committee
P. King.....Local Union Vice President
M. Carrasquillo..Griever

Background

There is no dispute that no. 5 blast furnace was shut down from February 27, 2001 until April 22, 2001. Nor is there any disagreement that the Company performed some substantial maintenance work on it while it was down. The issue in this case is whether the shutdown allowed the Company to invoke the provisions of Paragraph AA7 of the Agreement or whether, as the Union claims, it was a repair outage, thus implicating paragraph AA5. Both of these provisions are part of Appendix A, the Employment Security Plan negotiated between the parties in 1993. In general, this plan provides that most employees will be guaranteed 40 hour of work per week, although the 40 hour guarantee can be suspended or modified in certain situations. The plan, for example, will be terminated in the event of a "disaster," which is defined to include a permanent shutdown. Fortunately, the circumstances facing the parties in this case were less dire.

Paragraph AA5 of the plan provides that the parties may mutually agree to suspend the plan "in the event of a breakdown, or a repair downturn or outage which is expected to last for four weeks or more...." In such event, the suspension lasts only for

the duration of the event and it applies only to "affected employees." Paragraph AA7 reads as follows:

In addition, in the event of a significant decrease in the level of plant operations, which for purposes of this Plan is defined as the shutdown of a blast furnace, then employees affected by the decrease in the level of plant operations and eligible for employment security ... may be temporarily scheduled on a thirty-two week basis...."

The issue in this case arose because the Company employed AA7 to schedule certain employees for 32 hours while no. 5 blast furnace was shut down. The Union claims that the shutdown was a repair outage, as mentioned in AA5. The parties agreed that the sole issue is whether the shutdown is governed by AA5 or AA7, and not whether employees were affected by the decision.

The Company submitted testimony concerning the financial state of the domestic steel industry in general and Ispat Inland in particular. They also agreed that it would be inappropriate for me to reveal precise financial data concerning the Company in this arbitration award. It is sufficient to say that Ispat Inland has not been immune from the factors that have affected the industry generally, including low prices and foreign imports, the latter having a significant effect on the former. At the time of the hearing, 18 domestic steel companies had filed for bankruptcy or gone out of business. In the interval since the hearing, Bethlehem Steel has joined that list. This is important, the Company says, because the first paragraph of the Employment Security Plan says "The parties recognize that in order to provide employment security, the Company must be able to

attain a level of sustained profitability." Current market condition, the Company said, have made that impossible.

A Company witness said the decision to idle no. 5 blast furnace was made on January 12, 2001, which was the same day the Company revised its business plan for the year by lowering its projections. The problem, the Company said, was three-fold. First, billings were below expectation, in part because steel was selling for less and in part because orders were off. Second, there was considerable uncertainty about future billings as the Company went into 2001 and an expectation that they might fall off even further. And finally, the Company had an excess of inventory. This last consideration was apparently caused by two factors. There as less of a demand, meaning that inventories the Company had created were not being purchased by customers as rapidly as forecast. This was apparently especially true with respect to steel warehousing conveyors, a principal outlet for the Company's product. The other problem was that in 2000, the Company had experienced good production in iron and steel making, but had not been as fortunate in the 80" hot mill, which experienced production problems. A Union witness acknowledged that the hot mill using outpaces the blast furnaces, forcing the Company to buy semi-finished steel to meet its demands. Now the situation was reversed.

Company witnesses also were concerned about a deteriorating cash situation, a problems that plagued the entire industry. Thus, witnesses explained, the Company thought that idling the

blast furnace would allow it to sell off some of the inventory - which was at high levels - and convert the inventoried steel into cash. This was also a hedge against what the Company thought would be a continuation of deteriorating business conditions.

The Union said that initially it did not question the Company's motivation in shutting down the blast furnace. However, at a meeting between Local Union and Company officials prior to the shutdown, the Company revealed that it planned to do some significant repair and maintenance work while the furnace was down. The Union said it was aware that there was already a plan to idle the furnace for a shorter maintenance outage later in the year and it began to think that the Company was simply expanding it and moving it to an earlier time. At about this time, which was apparently fairly early in 2001, the Union heard that the order book was getting better, meaning that business was picking up. This caused the Union to think that the Company's decision to shut down the furnace might not have been influenced by a need for reduced production. The Union was also concerned because part of the inventory was attributable to the Company's purchase of slabs.

Neil Hubble, Plant 2 Blast Furnace Major Projects Engineer, testified about the work the Company did to the furnace while it was down. This included shockcreting a new lining, a job that had originally been scheduled for December, but was put off. He said there was also other work that was intended to make the furnace reliable for another year. This was more than could have

been done in a twenty-four hour outage, but not as much as is typically done on an extended outage. In fact, he compared other extended outages ranging from 25 to 29 days and said the work done on those was 3 or 4 times the work done here. In addition, employees worked on those outages around the clock, while employees on this project did not.

One of the most controversial jobs done on the furnace was core drilling the hearth to physically measure the wear in the bottom of the furnace. Hubble said this could only be done when the furnace had been cooled and the Company took advantage of the circumstances to do it here. The Union suggests that the Company did the core drilling because of the postponement of Project Arc, which prompted the Company to try to determine if the furnace would last several more years. Hubble denied that the postponement of Project Arc had anything to do with the Company's decision. He also said that the amount of work done on no. 5 blast furnace during the outage was not sufficient to insure that it would last two or three more years. If that had been the intent, much more work would have been needed. The General Manager of Operations Planning testified that the shutdown had originally been set for January, but was delayed when there was a stove failure at no. 7 blast furnace, which reduced production about as much as idling no. 5 would have done. He was involved in the decision to shut down the furnace and he denied that maintenance needs were a factor.

As noted, the Union questions whether the financial condition of the Company was as dire as the Company claims during the time the furnace was shut down. Its exhibits included graphs that depicted the financial trends in different formats, which it says indicate that over time there was a less dramatic impact than suggested by similar Company exhibits. In addition, some of the Company exhibits indicate that there was an increase in bookings and billings during the time the furnace was down. The Union also points to numerous Company documents. Union Exhibit No. 3 is a portion of the blast furnace business plan for 2001 which highlights the originally planned April maintenance outage. Union Exhibit 4 is the peak letter, which the Union uses to indicate that a blast furnace outage is included within the scope of AA5. This letter allows the Company to contract out certain work in certain circumstances, including "a planned outage that includes the shutdown of a blast furnace." The Union says this letter makes it clear that the parties have understood planned outages to include those affecting blast furnaces, and that it would be improper to exclude blast furnace outages from coverage under AA5.

Union Exhibit 5 is a newspaper article indicating that the Company shipped 1.36 million tons in the first quarter of 2001. The Union says this is significant because this comes out to an annual rate of 5.4 million tons, and this is within the range of Company shipments over the past few years, which vary from a low of 51 tons in 1996 to a high of 5.8 tons in 1999. The Company

shipped 5.6 tons in 2000. Union Exhibit 6 is the Company's 2001 10K filing, which includes the Company's steel production figures for the past five years. These figures indicate that production was higher in 2000 than it had been in 1999. Union Exhibit 7 is a Company press release which talks about new production records in 1997, a year when it shipped appreciably less steel than in 2000. Union Exhibit 8 discusses the Company's production in 1998.

Union Exhibit 9 is from Ispat's 2000 annual report. It reports problems at other Ispat plants, but says that Inland maintained a fairly stable order book. Union Exhibit 10 is a press release concerning Ispat's first quarter operating results, which mentions start up problems with the new walking beam furnace at the 80" hot strip at Inland. Union Exhibit 11 is an article from the Steelmaker Newsletter which describes the work done to no. 5 blast furnace while it was down. Union Exhibit 12 is a January 18, 2001 letter to Inland customers announcing that Project Arc had been placed on hold. Union Exhibit 13 is a magazine article describing Project Arc. Union Exhibit 14 is a series of notices to the Union concerning the purchase of blooms. The dates on the notices suggest there were apparently no such purchases between June 2000 and July 2001. Union Exhibit 15 is a listing of the slabs purchased in 2000, with the last purchase apparently being in June.

The Union says it is sensitive to the condition of the industry and that it is aware of problems caused by imports,

rising energy prices, and price decreases. However, it says these issues are not determinative in this case. Rather, the issue is whether there has been a significant reduction in the level of plant operations. In that regard, it says that AA7 has to be read in conjunction with AA5. It would have made no sense for the Union to bargain for employment security and then agree that it could be affected by routine maintenance outages for blast furnaces. The Union argues that it is clear that the Company used the shutdown as a way of performing maintenance and insuring that the blast furnace would be able to continue production in the face of the postponement and possible cancellation of Project Arc

In addition, the Union says its exhibits make it clear that while the Company may have had financial problems, they did not really curtail its level of production, since the rate in the first quarter of 2001 was similar to previous years. And, it says, level of production, not profitability, is the test under AA7. The Union is also concerned with the level of steel purchased by the Company in 2000, which is the year that presumably caused it to decide to shut down the blast furnace. The Union says it never agreed that the Company could, in effect, substitute steel made elsewhere for steel made at the Harbor Works. Yet the inventory problems cited by the Company were attributable in part to purchased steel

The Company argues that it cannot schedule employee for 32 hours merely because bookings are bad or because it has other

financial problems. Rather, the touchstone agreed to by the parties was shutting down a blast furnace, which was their definition of "a significant decrease in the level of plant operations." That is what occurred here, the Company argues, and is what is required to allow it to reduce the schedules of certain employees with employment security. The Company says that nothing in the Agreement prevents it from performing maintenance work when the blast furnace is down. It also points out that those responsible for shutting it down denied that maintenance concerns played a role in the decision. The Company says that AA5 is best understood to mean that there has to be an agreement to reduce schedules unless the equipment shut down is a blast furnace. The Company also says its decision to purchase slabs should not affect its rights under AA7. It bought the slabs in the early part of 2000, when managers were optimistic about the future, but things went bad after that resulting in too much inventory. The Company also says that its decision was not influenced by Project Arc.

Findings and Discussion

The Union's principal argument misreads AA7. It does not say - as it easily could have - that if a significant decrease in plant operation causes the shutdown of a blast furnace, then the Company may schedule affected employees for 32 hours. Rather, it says that if there is a significant decrease in plant operations, which is defined as the shutdown of a blast furnace, then the

Company may act accordingly. In short, as the parties drafted their Agreement, it does not say that a decrease in plant operation must cause a shutdown; it says that a shutdown is a decrease in plant operation. Indeed, nothing in AA7 even suggests that the reduction in operations must be linked to a reduction in orders or some other event that would make it improvident to operate a blast furnace. It seems merely to recognize that when a blast furnace is shut down, the operations of the Company will be significantly decreased

It may be that there is some limit on the Company's discretion to shut down a blast furnace and enjoy the benefits of AA7. I find nothing in the language of AA7 that suggests a shutdown must be absolutely necessary before the provision may be invoked. However, arbitrators sometimes read contracts to mean that decisions such as these must be made in good faith, especially when, as here, the Company's action interferes with a substantial right of the employees. But the Company easily meets that standard in this case. The evidence demonstrates that through much of 2000, the Company enjoyed increased orders. Presumably, pricing remained a problem, since an excess of product had lowered what the Company could get for its product, but the Company was operating at high levels. Orders fell off, however, near the end of 2000 and the beginning of 2001, and the pricing situation continued to deteriorate. Moreover, the Company had purchased semi-finished steel under Appendix TT at a

time when it appeared internal demand would exceed internal iron and steel making capacity.

The Company also did not anticipate the difficulties in the 80", which even the Union's witness said was unusual. By the end of 2000, then, events had accumulated to mean that the Company had excess inventory and was low on cash. It was also losing money on the steel it sold. In general, management decisions about how to operate its business are not my concern, but it seems obvious that what the Company did here was prudent. If there is too much steel in inventory and too little cash, it makes little sense to exacerbate the problem by continuing to produce more steel than the Company needs. Rather, the Company decided to use up part of its inventory and regain the cash it had invested in it. In these circumstances, the Company's decision to idle a blast furnace was obviously a good faith business decision. There is no evidence that the Company disguised its motives for the shutdown in order to allow it to effect repairs. Nor am I convinced that the Company shut down the furnace to facilitate its purchase of semi-finished steel.

The evidence established that the Company bought steel at a time when it thought the market was improving and when it believed that it could not produce enough steel to feed internal demand. There is no evidence that it purchased any steel after June of 2000. As things turned out, the Company's decision was unfortunate. But it is easier to make these judgments with the benefit of hindsight. There is no reason on this record to find

that the Company should have foreseen the downturn in demand or the problems in the 80", both of which contributed to an excess of inventory. Nor could the Company easily have foreseen that after the furnace was shut down, orders would begin to increase. The Union's exhibits concerning the amount of steel shipped do not convince me that the Company's decisions were made in bad faith. As I understand the exhibits, they show that the quantity of steel the Company shipped in late 2000 and early 2001 was comparable to previous years. But the Company apparently did not idle the facilities that make finished steel; it simply decided to make product by using up slabs that were in inventory. The amount of steel shipped, then, is not reflective of the problems the Company faced or the decisions it made to deal with them.

The Union says, however, that it makes no sense to read AA7 to mean that the shutdown of a blast furnace triggers the right to schedule 32 hours when AA5 makes it clear that repair outages require the consent of the parties to do so. Despite the peak letter, which obviously deals with different issues, it does make some sense to suggest that AA5 and AA7 are consistent even if AA5 excludes most blast furnace outages. The parties obviously understand that blast furnaces are subject to repair outages. But that isn't the point. The question is whether it would have made sense for the parties to separate blast furnaces outages from other kinds of outages. It would be perfectly rational for the parties to have agreed that significant breakdowns or repair outages might cause the parties to agree to suspend the

Employment Security Plan, but that the shutdown of a blast furnace was to be treated differently. The blast furnaces, after all, feed the Flat Products Company and contribute product to the Bar Company. The shutdown of a blast furnace might have a more significant impact on the operation than other types of outages, which could have convinced the parties that they needed to be dealt with in a separate paragraph. Moreover, given the potential for widespread impact, the parties might have decided that when there was a blast furnace outage, the Company could reduce the hours of affected employees, even if it could not do so for other kinds of outages.

Ultimately, I need not decide this issue. The evidence convinces me that the Company shut down the blast furnace for good faith business reasons and that this was not, therefore, a repair or maintenance outage. Thus, the provisions of AA5 would not apply. A good faith decision to idle a blast furnace for business reasons is not converted into a repair outage merely because the Company takes advantage of the shutdown to do some maintenance.

In sum, I find that the Company's decision to shutdown no. 5 blast furnace in these circumstances is governed by AA7. Therefore, I will deny the Union's grievance.