****

IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

between

ARCELOR MITTAL USA **Grievance No. CR-14-01**

and

UNITED STEEL WORKERS LOCAL UNION NO. 1011 **Gil Vernon, Arbitrator**
Case 79

****

APPEARANCES:

On Behalf of the Company: Javier Sanchez – Labor Relations Representative

On Behalf of the Union: Alexander Jacque, Sub 5 District Director

I. STATEMENT OF THE GRIEVANCE

The grievance was filed January 31, 2014, and read as follows:

> The original grievant, P. Hilty bid on an MTM posting (#2013-105—IHW MEU Crane Repair). He was offered and accepted that bid on November 11, 2013. The Company began tracking the 60-day time frame from the Sunday following the bid acceptance, in this case, November 17, 2013. The grievant remained in his prior position beyond the 60 day time frame, therefore, as of January 16, 2014, the penalty pay (commonly referred to as hostage pay) commenced being paid.

The third step meeting was held January 30, 2015 and was appealed to arbitration March 19, 2015. The Arbitration hearing was held September 22, 2016.

II. BACKGROUND, FACTS AND RELEVANT CONTRACT LANGUAGE

In general and broad terms, this dispute relates to the job posting and job filling procedures of Article Five Section E. According to sub-section 7(a):

> "When a permanent vacancy develops or is expected to develop, it shall be brought to the attention of all affected or potentially affected Employees in a manner which insures adequate notice."

Employees can bid on the vacancy and this is addressed in subsection 7 (b) that states:

> "Employees in the seniority unit who wish to apply for the vacancy or expected vacancy may do so in writing in accordance with reasonable rules developed by the Company."

The manner in which employees are informed as to who is awarded a vacancy (according to applicable seniority rules) is covered by subsection 7 (c) which refers back to subsection 7 (a) which states in broad terms that the manner of informing employees chosen by the Company must insure "adequate notice". Subsection 7(c) "states:

> "The notice requirement in Paragraph 7(a) above shall also apply to inform employees of the Company's choice to fill the vacancy."

The Company at this location has developed certain procedures. One of those procedures involves the presentation to the "prevailing bidder" of an "Acceptance-Refusal-Reversion Form". The form indicates that:

> "In the event I am not released within 2 full weeks following this Acceptance, I will be considered established on this position until such time as I am released for transfer."

Section A of that form is the "Acceptance" section with a check box. There are also check boxes for "Refusal" and "Reversion".

Before the form is presented to the successful bidder, the Company records the "tentative release date". This is the date the Company determines the employee will start the new job.

Getting closer to the heart of this particular dispute. Article Five, Section E, subsection 10(e) regulates how soon the Company must transfer the successful bidder. In other words, it regulates how long the Company can take to transfer the employee. In short, they can, subject to conditions, delay the transfer.

More particularly, the Company, in prescribed circumstances, can take up to sixty days without penalty (other than paying the higher rate of the new or old jobs). There is no dispute that on the 61st day of the delay all hours worked are paid at the overtime rate until the employee is assigned to the new job. Subsection 10(e) reads as follows:

> "Should the Company deem it necessary to retain an Employee on his/her former job in order to continue efficient operation, it may do so, for a maximum of sixty (60) days, on the basis of establishing such Employee on the new job and temporarily assigning him/her to his/her former job until a suitable replacement can be trained for the job or its performance is no longer required. In such event, after two (2) weeks of being delayed the Employee shall be entitled to earnings not less than what s/he would have made had s/he been working on the new job on which s/he has been established and, where applicable, shall be paid as though such hours were credited to any trainee program. In addition, should the Company not assign the Employee to the new job on the sixty-first (61st) day, all subsequent hours worked will be calculated at overtime rates until the Employee is assigned to the new job."

III. FINDINGS

The dispute presented by this grievance is quite narrow. The question at issue is: "When does the 60-day clock start ticking?" The positions of the Parties are equally focused. The Union contends the clock starts ticking the day the successful bidder signs the acceptance form. The Company contends that the sixty day period starts the first Sunday after the acceptance form is signed. It should be noted too that there is no dispute here that the Company had a valid reason to hold the Grievant(s).

The Union argues in favor of its interpretation on the basis of the facial meaning of the contract language that it contends is clear and unambiguous. In their view, the sixtieth day can fall on any given day of the week (not necessarily a Sunday) depending when the employee accepts the bid. Continuing, it is asserted the Parties could have but did not state that it started on the following Sunday or any particular day of the week.

The Company makes a variety of arguments in support of its position that the 60-day period begins the first Sunday after acceptance. First, the schedules for any week during which an employee might sign an acceptance form are already set the prior week as required by Article 5 Section C. Moreover, Article 5 Section D recognizes that schedules are set up based on the contractually defined payroll week that starts at 12:01 a.m. Sunday (or the nearest changing hour). The Union's

position, they argue, is not supported by the contract language as it does not say that "hostage pay" starts the 61st day after the day of "acceptance". Instead, it states the overtime pay is paid the 61st day after being delayed. They assert there is not only a practice of starting employees on a new job the first Sunday after acceptance, but there is a practice in place since 2010, that demonstrates that the hostage pay countdown starts on the first Sunday following acceptance.

The Arbitrator does not view the contract language as particularly ambiguous. The start date of the sixty days delay period would plainly be the day an employee would ordinarily start a new position save the necessity to retain the employee on his/her former job in order to continue efficient operations. There is no evidence in the record that employees ordinarily start a new job on the date of acceptance. On the contrary, the available evidence (an unrebutted assertion by the Company) indicates that employees ordinarily begin new jobs on Sundays consistent with the next new schedule.

To the extent the language is ambiguous and thus informed by practice the available evidence concerning delayed transfers falls on the Company's side of the ledger. The Arbitrator does not intend to rule that this evidence constitutes or qualifies as a binding practice for purposes of evaluating other cases. However, it is fair to say the Union has offered no contrary evidence since the language

became effective in 2010. Thus, the burden of demonstrating a contract violation has not been shouldered.

AWARD

The grievance is denied.

(Signature on Original)

Gil Vernon
Arbitrator

Dated this 15th day of December, 2016.