Award No. 785
OPINION AND AWARD
In the Matter of Arbitration Between
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievances Nos. 28-R-65, 28-R-94
Appeal No. 1396
Arbitrator: Herbert Fishgold
September 20, 1988
Appearances:
For the Company
R. V. Cayia, Operations Supervisor, Union Relations Department
R. Johnson, Maintenance Section Manager, #3 Cold Strip Mill Finished Products Department
R. Marwitz, Heat Treat Maintenance Section Manager, Coated Products and Continuous Heat-Treating Department
R. Beans, Heat Treat Maintenance Planner, Coated Products and Continuous Heat-Treatment Department
A. Kolasa, Representative, Union Relations
S. Amatulli, Section Manager, Labor and Transportation, No. 1 & 2 Cold Strip and Coil Processing Department
For the Union
M. Mezo, President
J. Robinson, Arbitration Coordinator
W. Trella, Staff Representative
Floyd Kinsey, Griever
T. Zaborski, Griever
J. C. Porter, 1st Vice Chair, Grievance Committee
R. Schneider, Assistant Griever
D. Rimschneider, Witness
P. Midkiff, Witness
Statement of the Grievance:
* 28-R-65
The Company violated the contract when it scheduled #3 C/S West Mechanics to work at #3 C/S East Continuous Anneal Line for scheduled repair work for the weeks of November 17th and the 24th. This violated a practice of over 15 years of maintaining separation between the two seniority areas in regard to mechanical maintenance work. It also undermined the seniority rights of mechanical employees of #3 Cold Strip East.
28-R-94
The Company violated the contract when on April 2, 1986, two mechanics from No. 3 Cold Mill West were assigned to work at No. 3 Cold Mill East and performed work within the jurisdiction of mechanics from the East Side.
Relief sought:
Grievance 28-R-65:
* The Company cease and desist and pay any and all monies and/or benefits lost.
Grievance 28-R-94:
Same
Contract provisions cited:
Grievance 28-R-65:
* The Union cited the Company with alleged violations of Article 2, Section 2; Article 6, Section 5; Article 13, Section 1 of the Collective Bargaining Agreement and the Temporary Assignments of the Job Clarification Manual. (At the Third Step Hearing, the Union identified its citation of Article 6, Section 5 as being in the Job Classification Manual).
Grievance 28-R-94:
The Union cites the Company with alleged violation of Article 2, Section 2 and Article 3, Section 1 of the Collective Bargaining Agreement, and Article VI of the Job Description and Classification Manual.

Statement of the Award:
The grievances are denied
CHRONOLOGY
Grievance No. 28-R-65
Grievance Filed: January 3, 1986
Step 3 hearing: March 12, 1986
Step 3 minutes: April 18, 1986
Step 4 appeal: April 28, 1986
Step 4 hearing(s): May 20, 1988, June 17, 1988, June 24, 1988
Step 4 minutes: July 1, 1988
Appeal to Arbitration: July 1, 1988
Arbitration hearing: July 26, 1988
Award issued: September 20, 1988
CHRONOLOGY
Grievance No. 28-R-94
Grievance filed: July 1, 1986
Step 3 hearing: November 12, 1986
Step 3 minutes: December 10, 1986
Step 4 appeal: January 2, 1987
Step 4 hearing(s): May 20, 1988, June 17, 1988, June 24, 1988
Step 4 minutes: July 1, 1988
Appeal to Arbitration : July 1, 1988
Arbitration hearing: July 26, 1988
Award issued: September 20, 1988
FACTS
Grievance Nos. 28-R-65 and 28-R-94 were filed on behalf of the employees established in the Mechanical Sequence of the No. 3 Cold Strip East Department. In Grievance No. 28-R-65, the Union claims that the Company violated Article 2, Section 2; Article 13, Section 1; and Article 6, Section 5 of the Job Description and Classification Manual. In Grievance No. 28-R-94, the Union claims that the Company violated Article 2, Section 2; Article 3, Section 1; and Article 6, Section 5 of the Job Description and Classification Manual.
Grievance No. 28-R-65 protested the assignment of mechanical employees from the No. 3 Cold Strip West Department to assist in the repair work being performed on the No. 3 Continuous Anneal Line located in the No. 3 cold Strip East Department. This assignment took place in the scheduled weeks of November 17 and November 24, 1985, with the major maintenance work involved occurring between November 19 and November 26, 1985. It is undisputed that no No. 3 Cold Strip Mill East Mechanical employees were laid off at the time and that, for the weeks in question, all East Mechanical employees were scheduled a minimum six turns weekly and were being offered additional turns which were left to their discretion to accept.
Grievance No. 28-R-94 protested the assignment of Mechanical employees from the No. 3 Cold Strip West Department to repair the crane located in No. 4A Roll Shop in the No. 3 Cold Strip Mill East Department. This assignment took place on the 3-11 turn of April 2, 1986. It is also undisputed that no No. 3 Cold Strip Mill East Mechanical employees were laid off at that time and that for the week in question all East Mechanical employees were scheduled a minimum of forty hours and were being offered additional turns which were left to their discretion to accept. There is also no dispute that the Mechanical Sections of the No. 3 Cold Strip East and West Departments are separate seniority sequences assigned to the two distinct departments. These departments however, are contiguous and are located within the same structural facility.
ISSUE
Whether the Company violated the Collective Bargaining Agreement as alleged when it assigned Mechanical employees from the No. 3 Cold Strip West Department to perform work in the No. 3 Cold Strip East Department on two specific occasions identified in Grievances Nos. 28-R-65 and 28-R-94.
DISCUSSION
The Company argues that the assignments at issue in the instant case were a proper exercise of management's rights under Article 3, Section 1 of the Collective Bargaining Agreement (Joint Exh. 1). Moreover, the Company argues that these assignments did not violate the Grievants' seniority rights.

On the other hand, the Union claims that the work in dispute has historically and exclusively been performed by employees of the Mechanical Sequence of the No. 3 Cold Mill East Department. According to the Union, these assignments constitute the transfer of an entire job across seniority lines which, in effect threatens the existence of the No. 3 Cold Mill East sequence.

As stated in Elkouri and Elkouri, How Arbitration Works, (4th Ed., BNA, 1985, p. 342), "probably no function of the labor-management arbitrator is more important than that of interpreting the collective bargaining agreement." There is no need to interpret the agreement if it is not ambiguous.

An agreement is not ambiguous if the arbitrator can determine its meaning without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends. But an agreement is ambiguous if plausible contentions may be made for conflicting interpretations' thereof. Moreover, it is recognized that whether a document is or is not ambiguous is a matter of impression rather than of definition, and this is obviously so because each provision may be as clear and definite as language can make it, yet the result of the whole can be doubtful from lack of harmony in its various parts. (Id. at p. 342).

Article 3, Section 1, states in part:

Except as limited by the provisions of this Agreement, the Management of the plant and the direction of the working forces, including the rights to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, to lay off employees because of lack of work or for other legitimate reasons, to introduce new and improved methods or facilities, and to change existing methods or facilities, and to manage the properties in the traditional manner are vested exclusively in the Company ....

The above provision gives the Company the right to direct its work force and make assignments in accordance with its operational needs and there is nothing in this provision which prevents the Company from making assignments across mill departments. The fact that the Company has not previously made assignments between the two departments does not prevent the Company from making the assignments at this time so long as the assignments do not violate the Collective Bargaining Agreement.

There is no dispute that prior to the occasions involved in the instant grievances, the Company has not assigned mechanical employees across departmental lines in No. 3 Cold Strip Mill. However, the clear language of the Collective Bargaining Agreement provides that the right of assignment is a right reserved exclusively to the Company and the fact that the Company has never exercised a reserved right is no ground for claiming the existence of a binding practice preventing such assignments in the future.

The mere exercise of management discretion in a given way over a period of time cannot by itself produce later restrictions on such discretion. Thus, in USS-9196; -9111; -9112 (Company Ext. No. 7), Arbitrator Milton Friedman, with the approval of Chairman Garrett, found that no negative past practice could be enforced under the Local Working Conditions provisions. Arbitrator Friedman stated:

Fundamental attributes of a binding past may be lacking if what is involved is the absence of a positive action -- that something has never been done before -- even though it would be allowable under the Agreement. A past failure to make particular temporary transfers or scheduling to avoid overtime are possible examples. Otherwise each procedure and method of assignment must ever after remain unchanged, because an occasion or desire to alter it had not occurred before.

Moreover, in Grievance No. 28-R-65, the Company presented at the Step 3 Hearing, the testimony of R. Marwitz and R. Beans. Section Manager and Planning Supervisor, respectively, for the No. 3 Cold Strip Heat Treat Maintenance Division. They each testified that the assignment of No. 3 Cold Strip West Mechanical employees to the No. 3 Continuous Anneal Line was based on the fact that the line was undergoing a major maintenance overhaul during its operations shutdown between November 19 and November 26, 1985. The temporary discontinuance of the line provided an opportunity to repair the line within a short period of time and the magnitude of the repairs required employee manpower greater than that which was available in the mechanical division of the No. 3 Cold Strip East Department. Although every East Department mechanical employee was scheduled to work six turns and was offered a seventh turn during the weeks in question, this schedule was inadequate to meet the maintenance requirements. Therefore, mechanical employees from the West Department were used to bolster the work force. This scheduling clearly did not disadvantage any employee in the East mechanical group.

In Grievance No. 28-R-94, at the Step 3 Hearing, R. Johnson, Section Manager, Maintenance, No. 3 Cold Strip Mill Department Finishing Section, testified that at approximately 4 p.m. on the 4-12 turn he was notified that the crane in the No. 4A Roll Shop was inoperative and that the brakes would not work. During the day turn, the crane had been worked on by the Field Forces Department to convert the operations of the

crane to a remote control floor operated crane. At the time Johnson was notified of the problem, all No. 3 Cold Strip Mill East mechanics were fully occupied with other work. The operations of the Roll Shop were being hampered by the crane being inoperative, and therefore, Johnson assigned No. 3 Cold Strip West mechanics to work on the crane to make it operational so that the operations of the Roll Shop could begin.
Accordingly, for the reasons stated herein, the Company's assignment of Mechanical employees from the No. 3 Cold Strip West Department to perform work in the No. 3 Cold Strip East Department on two occasions at issue was a proper exercise of Management rights under Article 3, Section 1 of the Collective Bargaining Agreement. They were a reasonable exercise of management discretion and there was no evidence of arbitrary or bad faith motivation.
The Union also argues that these cross department assignments resulted in a violation of the Grievants' seniority rights. On the other hand, the Company argues that the department and sequential standings of the aggrieved employees remained intact and there were no mechanical employees from the No. 3 Cold Strip East Department on layoff at the time of these cross department assignments.
Article 13, Section 1 of the Agreement states in part:
Employees within the bargaining unit shall be given consideration in respect to promotional opportunity for positions not excluded from said unit, job security upon a decrease of forces, and preference upon reinstatement after layoff, in accord with their seniority status relative to one another.
Under the above language, seniority rights provide certain entitlements in the areas of promotions and job security when there is a decrease in forces. In addition, employees receive preference for reinstatement after layoff.
It is undisputed that in Grievance No. 28-R-65, all East Side mechanical employees were scheduled a minimum of six turns weekly and all the employees were offered additional turns which were left to their discretion to accept. Similarly, in Grievance No. 28-R-94, during the time in question, all East side mechanical employees were scheduled a minimum of forty hours weekly, with opportunities for additional turns available.
It is clear that the Company has the right to supplement employees in a seniority unit with non-unit employees when employees in that seniority unit are fully utilized. In USS-9578; -9579 (Company Exh. No. 8) and USS-9106; -9111; -9112 (Company Exh. No. 7), Arbitrator Friedman stated:
Thus, in the absence of a specific Contract right or an affirmative established practice, Management may not introduce 'strangers' to the detriment of employees in the home seniority unit. By detriment, however, is meant the loss of some preference which would otherwise accrue to a member of the seniority unit. Prior awards show that the preferences do not include the right to be scheduled for overtime, but would include the right to temporary promotions, to recall from layoff, and to a full week's schedule.
Consequently, it must be held that restrictions on the Company's prerogative to effectuate temporary transfers are not present so long as the seniority rights of employees in a seniority unit are unaffected. This applies to job protections acquired by seniority so that priority is there to a full week's work, to promotions and the like. But scheduling for overtime work is not such a right derivable from either the Basic Agreement or the Local Seniority Agreement. As was stated in USS-8954, Management may schedule employees in such a way that overtime will not be required.
Therefore, since the Grievants' were fully utilized in both of the instances involved in these grievances, the Grievants have no basis to complain about the instant assignments.
In Grievance No. 28-R-94, in order to have the crane repaired by a No. 3 Cold Strip Mill East Mechanical employee, an employee would have had to be called from home and the Company would have had to incur overtime for those repairs. All other East side mechanical employees scheduled on that 4-12 turn were fully occupied with other work. The Company's right to avoid overtime has been clearly delineated in numerous Inland Awards, including Award Nos. 44, 500 and 571 (See Company Exh. Nos. 9, 10, and 11).
Therefore, in light of the above, the assignment of No. 3 Cold Strip Mill West mechanical employees already scheduled on the turn to repair this crane was a valid exercise of the Company's perogatives and did not violate the Grievant's seniority rights.
Finally, the Arbitrator does not find merit to the Union's remaining contention that the provisions of Article 6, Section 5 of the Job Description and Classification Manual, dealing with "temporary assignments," bar the Company's assignments of mechanical employees from one department to another. In the first place, the applicable conditions therein -- employee relocation due to decreased business activity -- are not involved in the cross-department assignments in these grievances. Moreover, the record indicates that mechanical work has previously been performed in the No. 3 Cold Strip East Department by employees from the Field Forces Department, Central Mechanical Maintenance Department, and "swat" team employees, without

specific "enabling" language to support the Company's action. Furthermore, such cross-department assignments have occurred throughtout the plant.

Accordingly, for the reasons stated herein, and the absence of any arbitrary motivation, the Company did not violate the Collective Bargaining Agreement by assigning Mechanical employees from the No. 3 Cold Strip Mill West Department to perform work in the No. 3 Cold Strip Mill East Department on the two specific occasions. These assignments, based upon the Company's proferred business justifications, were a proper exercise of the rights reserved to the company in Article 3, Section 1. Moreover, the Company did not violate the Grievants' seniority rights.

AWARD

For the reasons stated herein, the Grievances are denied.

/s/ Herbert Fishgold
Herbert Fishgold
Arbitrator
Washington, D.C.
September 20, 1988