Arbitration Award No. 792
IN THE MATTER OF ARBITRATION
BetweenINLAND STEEL COMPANY
Indiana Harbor WorksandUNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 23-S-50
Arbitrator: Clare B. McDermott
Opinion and AwardFebruary 20, 1989
Subject: Vacation Scheduling
Statement of the Grievance: "Improper vacation scheduling.
"Relief Sought Cease and desist. Schedule vacation correctly as employee requested.
"Violation is Claimed of Article 3, Section 1 and Article 12, Section 6."
Agreement Provisions Involved: Article 12, Section 6 (paragraph 12.18) of the August 1, 1986 Agreement.
Statement of the Award: The grievance is sustained.
ChronologyGrievance Filed: 3-21-88
Step 3 Hearing: N/A
Step 3 Minutes: N/A
Step 4 Appeal: 4-5-88
Step 4 Hearing: 5-4-88
Step 4 Minutes: 11-23-88
Appeal to Arbitration: 12-1-88
Arbitration Hearing: 12-8-88
Appearances
Company
T. Kinach -- Section Manager, Union Relations
J. Cundiff -- Section Manager, No. 3 C/S
L. Mish -- Section Clerk No. 3 C/S
Union
Jim Robinson -- Arb. Coord.
L. Kissinger -- Grievant
J. Canchola -- Asst. Griever
Z. Zdonek -- Steward
F. Kinsey -- Griever
BACKGROUNDThis grievance from the Coated Products and Heat Treating Department of Indiana Harbor Works claims violation of Articles 3 and 12, Section 6 (paragraph 12.18) of the August 1, 1986 Agreement in Management's refusing the times of three vacation weeks requested by grievant.
Grievant began with the Company in 1951. He is established as a #5 Line Operator, the top job on #5 Galvanizing Line in the Normalizing/Galvanizing Sequence, and was the second most senior employee established on the Line Operator job and in the sequence. There are ten jobs in this sequence, with three employees established on each at fifteen-turn operations, even though the galvanize line traditionally runs twenty-one turns per week, while the normalizing operation runs a varying number of turns per week, but fewer than twenty.
For vacation-scheduling purposes, Management has divided this Normalizing/Galvanizing Sequence into two large groups in order to calculate the number of employees who may be on vacation at one time. The six top jobs in the sequence are in the first group of Critical Jobs. The other group consists of the bottom four Non-Critical Jobs. There were thirty sequential employees in this sequence in 1988, and their total vacation entitlement for that year was 165 weeks. There are also at least nine non-sequential employees who regularly work in the sequence as "applicants," who are included in the calculation for vacation-scheduling purposes, and whose total 1988 vacation entitlement was thirty-six weeks. That brought total vacation liability for the thirty-nine employees who regularly work in the sequence to 201 weeks for 1988. Supervision divided 201 weeks (vacation liability) by 52 weeks in the year and arrived at a minimum of four employees who must be allowed on vacation each week on the average in order to satisfy the vacation entitlement of all employees who regularly work in the sequence.
Management has divided the group of six Critical Jobs into five subgroups for vacation-scheduling purposes, and a limit has been set of one employee from each of those five subgroups on vacation each week. Among employees in the second group (Non-Critical Jobs) there is no occupational quota per week

and, if no employee in the Critical Job block will be on vacation in a given week, up to four or five employees in the Non-Critical block may be on vacation in a week. Accordingly, in the entire sequence a maximum of five employees may be off each week ad a minimum of four must be off per week on the average in order to grant all vacation entitlements.

The Company calls this a "multiple-tier" approach, for use in allotting vacations. It says it avoids excessive dilution of qualified employees, burdensome overtime, and potential interference with operations. A diagram of the Sequence, arranged for vacation allotment, looks like this:

See .tif image 0792-01.tif, 0792-02.tif, 0792-03.tif.

Although three employees are established on each of the ten jobs on the sequence, #5 Galvanizing Line regularly works twenty-one turns per week, and, therefore, requires four employees to be qualified on each job. Thus, for vacation purposes and reading from the diagram, above, employees Moreno, Kissinger, Williams, and Gamez were grouped in one block as being qualified to perform the Operator job. The next four were bolcked as qualified on the next job of Welder/Feeder, and so on down the list of Critical Jobs, ending with the four listed as qualified on the Utilityman job, with Calderon as the last one.

With grievant established as an Operator, he was in the top block and the top subgroup for 1988 vacation allotment. But he was second in length of continuous service of the four considered as qualified on the Galvanize Operator job and thus did not receive all his first requests for 1988 vacations. Grievant was entitled to five vacation weeks in 1988. Apparently he got two weeks at his preferred time. He requested but was denied the additional weeks beginning July 31, and August 7, and December 25. Operator Moreno, senior to grievant and also in the top block, requested those weeks, and grievant's request for them was denied. In each of those three weeks a sequential employee with less continuous service than grievant was allowed to be on vacation, and this grievance followed.

The Company argues that to allow more than one employee, of the four in each separate subgroup of Critical Jobs to be off at one time would result in excessive dilution of qualified employees and would cause burdensome overtime and possible line shutdowns, and, therefore, more than ". . . minimum interference with plant operations. . . ," even ignoring consideration of possibly unscheduled absences for illness.

The Company says in allotting 1988 vacations it had to consider the number of predicted line operating turns required during the year; availability of employees qualified to replace those who would be on vacation on the critical jobs; and the level of known and reasonably anticipated absences (unstated) to be expected on those jobs. Supervision says it took account of all that and decided in late 1987 and early 1988, when it had to, that no more than one of the four employees established on the Operator job could be off in any one week

Since the sequence is manned adequately for fifteen-turn operations but regularly operate at twenty-one turns, the lower jobs in the sequence are filled by temporary, nonsequential employees, who work in and out of the sequence as their seniority dictates from week to week. The Department says it thus is constantly training employees from that fluctuating category of other employees to fill the four lower jobs in the sequence. It says, therefore, that it lacks either the resources or the time to train any large number of additional employees to be available for vacation relief on the higher Critical Jobs at the top of the sequence. Supervision insists that, if more than one employee in each group of four qualified on the Critical Jobs were allowed off in the same week, there would be no back-up employee qualified as Operator, and vacation restrictions simply would be pushed down to lower levels in the sequence.

The Union replies that the Company's own presentation here says that six employees were qualified to work the Operator job.

The Union argues that this two-group system--Critical Jobs and Non-Critical Jobs---which is then broken down again into five more subgroups amounts to a tier system carried to the extremely unreasonable length of using each job in the sequence as a separate vacation group.

Possibly pertinent provisions of Article 12, Vacations, read as follows:

12.18 "(4) The vacation time allotted to each employee for his vacation shall be determined by the Company so that it will cause the minimum interference with plant operations, with consideration being given the wishes of the individuals in accordance with their relative length of continuous service. The Company reserves the right to make changes in the dates of vacations at any time when it considers such action necessary, and the Company shall notify the employee or employees involved of any such changes in vacation date as far in advance as possible.

12.23 "(3) No vacation will be recognized unless scheduled with the approval of the department manager prior to the time of taking the vacation. A vacation, once determined, may not be exchanged or postponed, except with the approval of the Company and for reasons considered by the Company good and sufficient.
12.45 "In the resolution of such disputes, the Company's determination as to the scheduling required to insure the orderly operation of the plant shall be evaluated on the basis of the information reasonably available to the Company at the time the Company scheduled the vacation."
The Union cites Inland Award 704, stating that establishment of a tier system must be based on the specific facts of operating needs and requirements, and that a division of jobs into two tiers would have to be reasonable, in light of all circumstances. The Union urges that this multiple-tier arrangement is not based on operating needs and requirements and is not reasonable in light of all circumstance.
The Union relies also on a decision from the USX collective bargaining relationship, setting out five standards that must be considered in scheduling vacations, as follows: (1) basic skills and experience required in the specific operation; (2) skill and experience levels of the employees concerned in that operation; (3) expected levels of operation, including seasonal trends, affecting that level of operation; (4) anticipated circumstances affecting the operating level of the given employee group; and (5) other circumstances likely to affect required employment levels.
The Union says these vacation-scheduling decisions require that the Company justify its vacation grouping, in light of the details of operating needs and the individual employee's request, in accordance with his continuous service.
The Union insists that when employees requested 1988 vacations in October of 1987 and when Supervision was preparing those vacation schedules in late 1987 and early 1988, there were six employees qualified to work the top job of Operator. Thus, Management's honoring grievant's request allegedly would have meant that Moreno and grievant, the two most senior employees qualified as Operators, would have been away on vacation during the three weeks in contention here, leaving the other four to cover the normally expected twenty-one-turn operations.
The Union says that, if unforeseen problems were to arise at the actual vacation times, such as an unexpected accident or illness of one of the four remaining qualified employees, the problem could be taken care of under the Company's paragraph 12.18 right to change vacation dates when it considers such action necessary.
In addition, the Union notes that there were seven months between the late 1987 time of determination of this vacation schedule and the first questioned week (July 31, 1988). Thus it is said there was ample time for Management to schedule Comer, the next employee, to work enough break-in (double-manned) turns on the Operator job, to have another back-up employee trained and available.
It is said that Supervisions did not take account at all of grievant's individual request but simply relied mechanically and as a group calculation on the past overall structure of groups, blocks, and quotas. That allegedly failed Management's obligation to give consideration to ". . . the wishes of the individual employees in accordance with their relative length of continuous service." That is claimed to have carried the abstract logic of this multiple-tier system to a mechanical and absurd conclusion.
The Company alleges that thirteen other departments in No. 3 Cold Mill employ this kind of multiple-tier system for vacation scheduling. It relies also on three USX arbitration decisions and on the same Inland Decision, No. 704, as was cited by the Union.
Management says this same vacation-scheduling arrangement has been used in this sequence since 1983, without objection.
Section Manager Cundiff denied that Management has neglected its duty to train employees on the higher jobs, saying that it conducted such training for 591 man-turns in 1987. But he agreed that was concentrated on the two bottom jobs of the sequence--Tractor Operator and Coiler--on the Normalizing Line.
Cundiff said employee Sullivan, the last employee that Supervision treated as fully trained as Operator, was able and qualified on that job when he came to the Department and that Comer was the only one who received any training since then. He had 116 turns of double-manning on the Operator job, beginning in February of 1982. They were in batches and were not consecutive days. The operation never has been forced to shut down for lack of sufficient Operators or other skilled employees.
Grievant testified that Gamez, Perez, and Sullivan had broken in on the Operator by double-manning, and that it took Gamez six consecutive weeks of that kind of training to be qualified.
The Company argues that its right to allot vacation times so that they will ". . . cause the minimum interference with plant operations . . . ," is a standard more favorable to it than the rule in other agreements in the steel industry.

The Company stresses also that vacation-scheduling disputes such as this must be judged, according to paragraph 12.45, on the basis of the information reasonably available to Management at scheduling time, that is in late 1987 and early 1988.
The Union insists, however, that Management had six employees qualified on the Operator job and that, as of May of 1987, really had seven so qualified, but it nevertheless did not even consider, apparently, changing the block and quota arrangement established in 1983, to take account of changed circumstances affecting these decisions. The accusation is that Management set up a rigid system in 1983 and has continued to follow it, with no attention to any changed circumstances that might make one year different from an earlier one.
The Union argues that Management cannot hold back on its responsibility to train additional employees for all jobs and then complain that it cannot make more liberal vacation allotments because not enough employees are trained.
The Company says that in scheduling vacations it has a right to avoid development of situations that might require use of overtime to run the operations. It notes that grievant is a Line Operator, the top job in the sequence, so that this in not the easier problem of finding a vacation replacement for a Laborer.
FINDINGS
The Company argued several times here that straight seniority cannot be the sole guide in making these decisions. That was unnecessary, however, since the Union never said that it should be.
The real issue should be put in proper perspective at the outset. The Step 3 statement of this complaint says that Management treated grievant uncontractually by denying him three of his preferred vacation times, which it allotted instead to junior employees. But that is not what happened here. Grievant was not deprived of his preferred vacation times because they were given instead to junior employees. He would not have been allotted those three vacation choices even if the three junior employees had not existed. Grievant did not get those three choices, not because Supervision, contrary to the Agreement, gave them to junior employees, but because, in obedience to the Agreement, it allotted them to the only employee in this sequence senior to the grievant, Moreno, the most senior employee in the sequence, who is established also on the Operator job, and who requested these three weeks.
Grievant's real complaint is, therefore, that the universe of employees among whom relative seniority was counted for this purpose was too small, or that the quota imposed, only one employee off at one time in each of those five subgroups of jobs, was administered in too mechanical a fashion.
Grievant insists that limiting the vacation absences on Critical Jobs to only one employee at a time was a decision not shown to have been reasonably related to causing only ". . . minimum interference with plant operations . . . ," it thus cannot stand up under the standard of paragraphs 12.18 and 12.45.
It may be true that the fact that vacations have been allotted on this basis since 1983 cannot support Management's position by way of Article 2, Section 2 local working conditions. Local working condition lore does not apply directly in analysis of vacation-scheduling determinations because the Agreement sets out reasonably clear rules for doing that and, more significantly, because the relevant facts of one year's vacation-scheduling factors rarely are the same as those of a former year's.
It nevertheless is true that the way such decisions have been determined in past years is relevant as tending to show what is a reasonable and practical way to deal with the same problems, absent some significant change in relevant factors.
The Union argues, however, that Management cannot ignore its inherent managerial duty to train employees for all jobs requiring any degree of skill that can be acquired only by such training, and then plead lack of trained employees, which is caused, as an excuse for not giving reasonable consideration to the facts of an individual employee's vacation wishes according to seniority.
The Union says there were six employees qualified on the Operator Job and that Management thus could have allowed two to be off at once, and it still would have had four employees qualified as Operators. If some unforeseen situation had arisen thereafter in one of these disputed vacation weeks, the Union says Supervision could have manned the job by overtime among the remaining three qualified employees.
There were six employees qualified as Operator at the time, as the Company agrees, and the Union insists that is enough. It is enough to run twenty-one turns per week, but it is barely so. Should any of the four fall ill or the victim of an accident, there would be no qualified replacements, and the galvanizing line could not operate at twenty-one turns per week without overtime or some outside help, and it could not be said that Management is not entitled to take account of that possibility in scheduling vacations so that they will cause minimal interference with plant operations. But there is no need or even occasion on this record to

make any such ruling because to continue speaking as if this problem were limited to only six employees trained as Operator simply is not realistic.

This training question is the closest issue here. Management insists it did train employees on jobs in this sequence, and Section Manager Cundiff said 591 man-turns of training on these jobs had been done in 1987. That sounds impressive, but Cundiff then conceded that most of those training turns were concentrated on the two bottom positions in the sequence, the Coiler and the Tractor Operator.

The Company's estimate was that a minimum of two months of five-day weeks of double-manning on the Operator job would be necessary to qualify an employee properly, and grievant's guesstimate was that six weeks of that kind of training would be required, and he based that on what he says was the time required to train Gamez.

This seems to be the narrow factor on which this dispute turns. Comer was the next employee down from the last one (Sullivan) fully trained as Operator. But Comer already had been assigned for double-manned training for a total of 116 such turns since February of 1982. They were not in a stretch of consecutive turns but came here and there. Even so, however, 116 training turns is a lot of training, amounting to over twenty weeks, at least sufficient to bring him very near to being fully trained. Accordingly, it would have taken little additional training in November, December, or January to top off his training as Operator, sufficient to bring the number of trained employees, if not to seven, surely to six plus. That would have been adequate to serve as a reliable source of outside help if it later should become necessary to fill in for one of the four employees then working the job if one of them should be felled by some unforeseen accident at vacation time.

Thus, although the Company position here speaks in terms of necessity to have four trained employees always at work per week, the fact is there were at least six such employees, and so very nearly seven as to be not worth insisting on six. Thus, this was not a matter of one out of four employees going off, leaving only three, but really two out of six or seven going off, leaving at least four at work, which was one more than would have been present in the situation Management was prepared to accept, which would leave only three at work. With things that close, it cannot be found that Management gave reasonable consideration to the specific facts of grievant's individual request.

This is not a decision that there is or is not an all-encompassing and universally applicable training duty in paragraph 12.18, covering all cases. No such holding is called for on this record. This analysis holds only that in the particular circumstances of this case, this vacation-scheduling allotment was made in too rigid and mechanical a fashion and without decent consideration for the facts of grievant's individual wishes. Consequently, the grievance will be sustained.

AWARD

The grievance is sustained.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator