Award No. 836
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance 23-R-69
Appeal 1447
Arbitrator: Terry A. Bethel
February 12, 1991
OPINION AND AWARD
Introduction
This case concerns a grievance filed on April 1, 1986 protesting the company's decision to eliminate the position of car blocker from the shipping sequence at no. 3 cold strip mill west. The case was tried in the company's offices in East Chicago, Indiana on October 26, 1990. Brad Smith represented the company and Jim Robinson represented the union. Both sides filed pre-hearing briefs.
Appearances
For the Union
J. Robinson, Arbitration Coordinator
T. Zaborski, griever
W. Riley, witness
J. Bryant, witness
I. Salizar, witness
T. Beaudreaux, witness
For the Company
B.A. Smith, Project Representative, Union Relations
R.V. Cayia, Section Manager, Union Relations
E. Richards, Section Manager, Shipping, No. 3 Cold Strip
W. Clinon, Supervisor, Shipping, No. 3 Cold Strip
Background
This grievance concerns the company's decision to stop scheduling the car blocker in the shipping sequence of the No. 3 cold strip mill west. Prior to 1986, when the position was eliminated, the company had scheduled two car blockers for each shipping turn. Over the course of years, the duties of the car blocker changed significantly. Prior to 1982, the car blocker's primary function was to block and brace lifts of sheets and coils for shipping. That consisted, essentially, of readying flat bottomed, open railroad cars to accept shipments of coils and sheets. This function involved substantial blocking and bracing and was quite labor intensive.
By the early 1980's the blocking and bracing function was largely unnecessary because of the advent of new V bottomed trough cars specially made to receive shipments of coils and sheets. In addition, in 1982 the company eliminated production of sheets by no. 3 cold strip. Although the primary function of the car blocker had, thus, disappeared by 1982, the position itself was not eliminated. Rather, from 1982 until 1986, the car blocker assumed what amounted to a new primary function which the company's brief describes as supplementing the existing loading and wrapping crews in preparing coils for shipment. During this period, the company says, the car blocker's primary function became the reconditioning of coils. Most of the reconditioning, it seems, was necessitated by damage done to coils in storage, often by stacking the coils on top of each other.
This primary function, too. was significantly affected by what the company claims were other changed conditions. The principal change was a new coil storage system which reduced the amount of damage to the coils. In addition, largely because of customer complaints, the company reduced the amount of steel kept in its inventory and it further reduced the damage to coils by inaugurating a coil handling team and by changing some of the equipment used to move coils around the warehouse.
By 1986, then, the company claims that the car blockers spent no more than 15 minutes a day reconditioning, wrapping and shrouding coils, whereas previously they had spent most of their day in that activity. In addition to those duties, the car blockers also spent time performing some switching duties and a small amount of time cleaning cars. In all, however, the company says that the car blockers did not have more than an hour and a half to an hour and forty five minutes of work each day.

In March of 1986, then, the company eliminated the position. Ultimately the car cleaning and switching duties were assumed by the utilityman, although the switching duties were apparently not so assigned immediately -- indeed, it does not appear that the utilityman job even existed at the time the car blocker was eliminated. The remaining duties of wrapping, coil reconditioning and shrouding were reassigned across seniority unit lines to the wrappers. It is those duties which formed the focus of the parties' dispute. At any rate, it was those duties that accounted for most of the energy expended in the hearing.
The grievance simply protested position and asked for a make whole the elimination of the car blocker remedy. The union's position at the hearing, however, while not inconsistent with that claim, was more cautious. In his final argument, which I have listened to numerous times, Mr. Robinson spoke not of reinstating the car blocker but rather of restoring the wrapping and reconditioning work in the shipping department to the shipping sequence.
The union pins its case on an alleged violation of Article 2, section 2, article 3, section 1 and article 13, sections 1 and 3. The article 2 and 13 allegations are the most substantial. Under article 2 the union asserts that there is a local working condition recognizing the right of the car blockers within the shipping sequence to perform coil reconditioning and related work, what the union claims is a recognizable body of work these employees have done with reasonable exclusivity in the shipping department. Under article 13, the union claims that the company violated the seniority rights of employees in the shipping sequence by transferring work recognized as belonging to that sequence across seniority unit lines.
Discussion
This is a question of some complexity. The union asserts that the shipping sequence had established a right to the work formerly done by the car blocker and therefore argues that it could not be transferred across seniority unit lines. It concedes, however, that an exception to that general principle exists if only minimal and inconsequential duties remain because of changed conditions. It claims, however, that the duties at issue here were more than minimal and inconsequential. At base, that's the issue.
There is no doubt that the car blocker's duties changed significantly over the years. By 1982, the occupation's principal function was no longer needed. The new railroad cars had made it unnecessary for the company to invest significant labor in preparing cars for shipment. Whether the company could have stopped scheduling the car blocker at that time is not at issue. Whatever residual duties may have remained from the car blocker's original function, there is no dispute that the employees in that classification soon became fully engaged in another primary task -- reconditioning coils and at least some rewrapping of coils. Although that function never actually appeared in the job description, that fact seems of no consequence here. The company acknowledges as much in its brief. There is also no dispute that this new primary function was affected by technological improvement and other factors. Both the inception of a new coil rack system and the advent of the coil handling team helped the company reduce the amount of coil reconditioning work available for the car blocker. The question is whether that reduction was substantial enough to justify the company's claim of changed conditions sufficient to eliminate the job. <FN 1>
The company asserts that only about 15 minutes of car blocker work was assigned across seniority unit lines to the wrappers. Even if accurate, however, that does not mean that the car blockers were actively engaged in only 15 minutes of work a day at the time the job was eliminated. There is no question, for example, that some of the duties formerly performed by the car blocker have been assumed by the utility man classification in the same sequence. The company claims, however, that even if those duties were considered, the car blocker would have had available only about one hour and thirty to forty-five minutes of work a day. Retaining an occupation to perform such a minimal amount of work, the company claims, is unreasonable.
I don't know exactly where the breaking point is and, I must say, neither the arbitration awards furnished by the parties nor the arguments they made at the hearing were of great assistance in that determination. If there were only 15 minutes of work available a day, no doubt that would be sufficient to justify elimination. That, of course, is not the contention here. But I have significant doubt about the company's claim that, whatever else the car blocker might have been doing, only 15 minutes of car blocker work was transferred across seniority unit lines to the wrappers.
I don't mean to suggest that I doubt the veracity of Ed Richards, the company's only witness. It must be remembered, however, that this case was heard near the end of October 1990 and concerned circumstances that existed in early 1986. There was significant testimony about what has happened since that time and even some projections about what the future holds for wrapping and reconditioning work. It was, in short, difficult to recreate the conditions that existed at the time of elimination without being influenced by the positions the parties have taken since. Nevertheless, I think it is appropriate to look at circumstantial

evidence about the amount of traditional car blocker work that the company reasonably believed would be available.

The company did not merely eliminate the car blocker position in March of 1986. At the same time that it assigned what it now characterizes as residual and minimal car blocker duties to the wrappers, it also added some new wrappers One of those is referred to by the parties as a ship wrapper. Although admittedly this is not a separate classification, it is also true that this new wrapper was assigned to the shipping area -- where wrappers had previously not worked -- expressly for the purpose of assuming those "residual and minimal" duties formerly performed by the car blocker. The obvious question is why, if the remaining car blocker duties were so minimal that the position needn't even be retained, it was necessary to add a new employee in a different sequence to take them on. The company, after all, claimed that only about 15 minutes of work a day were at issue. Moreover, the ship wrapper was not the only new wrapper added in 1986. It would seem reasonable to believe, then, that an insignificant 15 minutes of work could easily be absorbed by the existing wrappers, whose numbers were already being supplemented without the ship wrapper. I asked that question at the hearing.

The company's answer was that the ship wrapper would only spend part of his time in shipping doing the minimal duties formerly performed by the car blocker and would spend the bulk of his day in the production units, where the other wrappers work. The ship wrapper was necessary, the company said, because the work available in shipping is intermittent and cannot easily be scheduled. Thus, the company needed the assurance that it would have someone available in shipping when he was needed. I can accept this answer, but not when only 15 minutes of work are at issue. In my view, the more reasonable inference to draw is that, at the time the car blocker was eliminated, the company believed that enough residual work was available -- or soon would be available -- to justify creation of a wrapper who would assume those duties and then spend the remainder of his time in the production units.

I do not mean to suggest that the company's right to eliminate the car blocker position in 1986 depends on after-the-fact developments that were not evident then but have since ensued. But I do suggest that it is reasonable to take into account what the company reasonably believed the car blocker -- or someone taking the car blocker's place -- would soon be doing. I cannot believe that sound management would support the creation of a new position to take on only minor and inconsequential duties. Rather, it seems more likely that creation of the ship wrapper was believed by the company to be a more sensible method of subsuming the car blocker's duties into the similar work already performed by the wrappers -- and which, incidently, Richards had the wrappers perform at his pervious assignment ay no. 3 cold strip east.

This scenario is consistent with testimony offered by the union that before 1986, the car blockers spent 60 to 70% of their time wrapping, including work on coils that was given to them when the wrappers on the units fell behind. There was also testimony from former car blockers that after the elimination of their job the ship wrappers performed no duties other than those formerly done by the car blockers.

In short, although the elapsed time has made reconstruction of the facts difficult, I am inclined to believe that the amount of work transferred across seniority unit lines was more than minimal. It may be that the new arrangement was a more efficient method of operation. Even though the car blocker's remaining duties were more than minimal, it may have made more sense economically for the company to combine those duties with the responsibilities of the wrappers who, after all, performed essentially the same function. In my view, however, the union was able to establish that the car blocker had performed coil reconditioning and wrapping duties in the shipping department and, as such, those duties could not be transferred across seniority sequence lines -- whether more efficient or not -- unless they were residual and minimal in amount, or unless the parties agreed to the change.

I have read with some care each of the many arbitration awards presented to me by the parties. Although the cases are generally instructive, none of them presents an easy solution to the case at hand, an observation that seems obvious given the parties' inability to resolve the dispute absent arbitration. The company places great reliance on Inland Award 815, which was rendered just 15 days before the hearing in this case. There, as here, the union had claimed violations of article 2 and article 13 as the result of the company's elimination of a job (conductor) and the subsequent distribution of duties both inside and outside the seniority unit. Although the arbitrator made no finding, the company asserted that the conductor had only about two and a half hours of work at the time of elimination. About 30 minutes of that amount was transferred across seniority unit lines and distributed among existing employees.

The arbitrator found that the changed circumstances justified elimination of the job and characterized the seniority unit lines as "no[t] really serious." The company urges a like result here. Frankly, I would find this case persuasive if I believed the time estimates offered by the company at the hearing. Total engagement in

any duties was, according to the company, less in this case than it was in Award 815. And even less work was transferred across unit lines here than there and, like that case, the transfer was to employees already performing similar duties at least recognized in the job description. But in 815 the company did noy create a new position to assume the duties being relinquished by the conductor, as it did here.
I think the other awards cited by the company are equally unavailing. In Inland Award 732, for example, the arbitrator observed "the removal of an employee from a classification where his services are no longer required cannot constitute a violation of the seniority provision of the agreement. . . ." (emphasis added) Similarly, in Inland Award 809 the arbitrator said that the evidence "shows that a sizeable minority of the old weighers duties were eliminated." The question in the instant case, however, is whether the duties were actually eliminated or merely transferred to someone else.
I agree with the company's observation that not every transfer across unit lines leads to a violation of the contract. As the company says "this is a question of fact which must be determined by analyzing the facts and circumstances of each individual case." The crucial fact here, in my opinion, was the necessity to establish a new wrapper to assume the "residual and minimal" duties surrendered by the car blocker. As I noted above, I don't question the veracity of section manager Richards. But as Jim Robinson correctly pointed out, his testimony about the work remaining for the car blockers at the time of elimination was merely his estimate, was not supported by documentation or other evidence and, as such, was not of significantly greater value than the contrary testimony of the former car blockers and other employees who, like Richards, were testifying about their impressions.
In summary, I am unable to conclude, as the company claims, that the changed circumstances in the shipping department were sufficient to justify elimination of the car blocker position or that the duties transferred to the ship wrapper were merely minimal in amount. Accordingly, I will sustain the grievance.
Remedy
The union asks for a make whole remedy, but asserted at the hearing that I needn't be concerned with the details. Moreover, as I noted above, it was cautious about asserting a need to reinstate the position of car blocker. Rather, the union claimed that it and the company could construct the appropriate remedy should I determine that a make whole award was indicated. The company voiced no objection to this approach, although admittedly the company had no particular incentive to discuss remedies. Nevertheless, I see no impediment to the procedure suggested by the union. Accordingly, I will recommit the case to the parties to work out the details of a make whole remedy. Obviously, the parties are free to return to arbitration should they be unable to reach agreement.
AWARD
The grievance is sustained. The parties will provide for a make whole remedy as discussed in the remedy section of the opinion.
/s/ Terry A. Bethel
Terry A. Bethel
Bloomington, In
February 12, 1991
<FN 1> The company asserts that the changed condition that can justify the elimination of a local working condition need not occur all at once but, rather, can occur over a period of years. The union does not necessarily concede that point, but it raises no substantial issue about the matter. I have read the awards relied on by the company in support of its position and I agree that change need not necessarily occur all at one time in order to invoke the "changed circumstances" principle. Nevertheless, it is not clear to me that recognition of that principle does much for the company in this case. Unlike those cases in which an occupation's duties were gradually eliminated, here there was a significant change in responsibility. As I note in the opinion, I need not decide whether elimination of the bracing and blocking function would have justified elimination of the car blocker position. The fact is, however, that the principal function made unnecessary by the advent of V bottom cars was soon replaced by another principal function -- reconditioning coils and associated wrapping duties. Although the reduction in those duties did not all occur in an instant, the evidence showed that the lessened demand for that work occurred within a relatively short time. In any event, as I see this case, I do not have to determine the significance of the elimination of bracing and blocking duties in 1982 since, following that change, the parties accepted a new and unrelated primary function for the car blocker.