IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And AWARD 969

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company improperly used craftsmen assigned to the Plant 2 blast furnaces to do repair work at No. 7 blast furnace. The case was tried in the Company's offices on March 28, 2000. Pat Parker represented the Company and Mike Mezo presented the case for the Union. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration
R. Marwitz.....Mgr., Mfg. Maintenance
J. Miskulin.....Section Mgr. Maint. Plt 2 BF
C. Lamm.....Staff Rep., Union Rel.

For the Union:

M. Mezo.....Staff Rep., USWA
L. Aguilar.....Secy, Grievance Comm.
B. Carey.....Staff Rep., USWA

Background

John Miskulin testified about the work assignment at issue in this case, which involved changing a grinding wheel at No. 7 blast furnace. The work was spread over two weeks, though it did not comprise all of the work of the affected craftsmen for those two weeks. During the first week, the employees put together the lockers they would use at No. 7 blast furnace and stocked them with tools. They transported the lockers to the work area and also spent time familiarizing themselves with the area and the work to be performed. This included a walk-through of the department, locating tools and safety islands, and going through the job procedure. There was also a Policy and Procedure 261 Orientation, which is a safety orientation. There were five mechanics involved in the first week working under Plant 2 supervision.

The blast furnace was shut down during the second week, which is when the Plant 2 mechanics actually changed the grinding wheel. They worked on the wheel the first and second day and then returned the tools to the Plant 2 area on the third day. Miskulin said five of the six mechanics involved in the second week were the same as the ones who had worked on preparation for the project during the first week. The other one had been on

vacation the first week. The employees maintained their lockers at Plant 2 during the project, they reported and left from Plant 2 and, with one exception, they ate lunch there. Miskulin said there were MMD employees working in Plant 2 during the first week of the project, but that it would not have made sense to assign the No. 7 blast furnace work to them. The first week was devoted to preparation for the actual work, which would not have been performed by MMD employees in the second week. He said virtually all of the MMD employees were assigned to other work on the No. 7 blast furnace outage the second week.

Miskulin said there were no craft employees displaced from either Plant 2 or from No. 7 blast furnace at the time this work was performed. He also said that the assignment to work on No. 7 blast furnace equipment was not made on the basis of seniority and that the employees who did the work were not actually assigned to No. 7 blast furnace. He testified that the work at issue was substantially similar to work the employees normally do in Plant 2 and that, in fact, the grinding wheel at No. 7 blast furnace actually grinds coal that is used in the Plant 2 blast furnaces. On cross examination, Miskulin acknowledged that prior to this assignment, Plant 2 craftsmen had been limited to working in the Plant 2 areas described in the Union's supporting facts, save those that had been shut down.

The Company's other witness was Rick Marwitz, who identified Appendix N, which allowed MMD forces to supplement assigned maintenance forces on scheduled repair downturns. I will discuss

this agreement in more detail below. Marwitz also identified Inland Award 785, which allowed the Company to use assigned maintenance forces to perform work typically performed by a different seniority sequence. The Company says the circumstances of that case are similar to those at issue here, since all of the assigned craftsmen of the host department were fully utilized at the time the assignment was made. Marwitz said the Company did not consider the employees of the sequence who did the work to have been "displaced" from their sequence for the duration of the assignment, which is a significant issue in this case. On cross examination, Marwitz acknowledged that the facts at issue in Award 785 were the first time the Company had made such an assignment in those departments.

Union witness Louis Aguilar identified Union Exhibit 1, an amendment to Article 13, Section 3, which allowed non-craft sequences to work across seniority sequence lines in certain situations. The Union offered this as evidence that the Company understood that it did not have the right to assign employees across seniority sequence lines without agreement from the Union, and it notes that the exception provided in this amendment excluded the crafts. Aguilar also identified Union Exhibit 2, Appendix T, which is an addendum to the Mega Maintenance Agreement (MMA). In particular, the Union points to paragraph E, which reads, in relevant part:

> In the event the demand for maintenance in an assigned department exceeds the available resources of both the assigned department and MMS because those resources have been committed to other work, the Company shall first meet that demand by assigning craftsmen from a pool of employees who have volunteered on an annual basis to work outside their home department and have not been committed to other work in the plant. The Company will post for volunteers annually ....
>
> ***
>
> This provision does not modify the rights of management as described in Article 3, Section 1 of the Collective Bargaining Agreement.

Aguilar testified that this paragraph was a Company proposal, which the Company said was intended to get more manpower for the quarterly outages. Obviously, the Union argues that this provision would have been unnecessary if management already had the right to assign craftsmen across seniority sequence lines.

However, Pat Parker, testifying for the Company, asserted that it was the Union, not the Company, that sought this change. He said the Union claimed there would be no Appendix T without this provision. He also said that the last sentence was directed at Award 785 and, as the Company understood it, it meant that if there were not sufficient volunteers, it could make the assignments itself. Parker said if the Union thought the Company wanted paragraph E, then he was willing to strike it from the Agreement altogether.

Aguilar also pointed to the mutual agreement concerning the Inland Steel Products Company (ISIP), entered into in November, 1992. One part of that agreement allows the Company to make

craft assignments across seniority sequence lines in certain circumstances. This agreement would not have been necessary, the Union says, if the Company already had the right of assignment it claims in this case.

Bill Carey's testimony was intended to rebut the Company's contention that language on page 7 of the Mega Maintenance Agreement justifies the action it took here. The Union's argument depends on an interpretation of several paragraphs of the Agreement. The bracketed paragraph numbers have been added to aid discussion:

> (3) Maintenance Needs
>
> [1] The parties recognize that it is essential to achieve the potential benefits offered by Mega Maintenance. In order to accomplish this, certain flexibility in the use of maintenance resources will be required. Along with the need for flexibility, the parties recognize the advantages of matching work assignments with employee skills. Accordingly, to gain the needed flexibility, the existing rights and obligations of the parties are modified only to the extent necessary to comply with the following:
>
> [2] Eliminate the restrictions on MMS performing only "work associated with scheduled repair downturns." Allow the MMS and all central forces to perform work in all department s in the plant.
>
> [3] The 67% base force is eliminated including Shop Services Welder, Field Services Machinists (as well as assigned maintenance employees).
>
> [4] The new minimum base force complement, which will replace the previous 67% minimum base force complements, will be the number of sequentially established employees as of the effective date of the new CBA.
>
> [5] The new minimum base force complement may be further reduced through (1) attrition, (2) shutdown of an operating department or a portion thereof, or (3) technological change. Craftsmen covered by a minimum base force

complement, who are displaced, will be reassigned to central maintenance.

[6] A craft sequence, covered by a minimum base force complement, may be reduced below the base force complement(s) level during reduced operation in such department. The parties agree that the reduced operations for an unassigned craft sequence, (including MMS) shall be defined as reduced demand for that craft sequence(s). Craftsmen covered by a minimum base force complement, who are displaced, will be reassigned to central maintenance....

[7] Manning levels for craft sequences not covered by the base force provisions contained herein, may be reduced....

[8] Reassignment of craftsmen from sequences with or without a base force complement will not be made as a result of an artificial reduction in work, that is, if craftsmen from one sequence are assigned to another craft or sequence it would be only for the purpose of performing the work of the other craft.

***

(Bracketed paragraph numbers and underlining not in original.)

The Company relies, in part, on paragraph [8], which seems to recognize that craftsmen can be reassigned as long as it is not the result of an "artificial reduction in work." Carey testified, however, that this paragraph was not intended to apply to assigned maintenance forces, which are at issue in this arbitration.

Carey testified that the Mega Maintenance Agreement was actually a discussion draft and that the intention was to refine the language after the negotiations for a new collective bargaining agreement were completed. Those revisions were never made, though the Union agrees that the Mega Maintenance Agreement, as written, is binding. Carey's testimony about

refinement -- which the Company did not rebut -- was apparently intended to demonstrate that some provisions of the Agreement may be ambiguously drafted. For example, the provision relied on by the Company is not, on its face, restricted to unassigned maintenance forces. However, Carey pointed to the elimination of the 67% base force complement in paragraph [3] and the replacement of that in paragraph [4] with a new base force complement of 100% of the employees as of the effective date of the new contract. These two paragraphs, Carey said, applied to assigned maintenance, since most unassigned maintenance forces did not have a base force complement (with the exception being the three unassigned forces mention in paragraph [3]).

Carey said paragraph [5] indicates that the new minimum base force complement (that is, the 100% complement applying principally to assigned maintenance forces) could be reduced by attrition, shutdown of an operating department or technological change. That provision does not apply to unassigned maintenance forces. Paragraph [6] says that a craft sequence covered by a minimum base force complement -- which presumably includes assigned maintenance forces -- can also be reduced below the base force "during periods of reduced operations in such department." However, unassigned forces do not have a departmental assignment, so the question that arose was how to define the circumstances in which they could be reduced in periods of reduced operations. The parties defined "reduced operations" for unassigned maintenance forces as those in which there was a "reduced demand

for that craft sequence(s)." This definition applied only to unassigned craft sequences. And the underlined phrase "reduced demand for that craft" must be compared to the underlined phrase in disputed paragraph [8], which says that reassignment will not be made as a result of an "artificial reduction in work." The Union says that the reference to reduction in paragraph [8] refers back to the reference to reduction in paragraph [6]; and, since the language concerning reduction in paragraph [6] applies only to unassigned maintenance forces, then it is clear that the language in paragraph [8] is similarly limited. Carey also said paragraph [8] means that if craftsmen are assigned to other crafts or sequences when there is no work in their own craft, they are only to do the work of the other craft.

The Company points out that in previous contracting out cases, the Union has sometimes argued that a project should not be considered major simply because the craft employees assigned to that department did not have the capacity to do the job. Thus, it says that in COEX 25, the Union argued that I should consider the fact that the Company employed more than 500 electrical employees plant wide and that I need not consider the scope of the job merely in the context of the approximately 100 wiremen assigned to the department. Similarly, the Company says that in COEX 27, the Union argued that I should take into account the fact that the Company employed other machinists and mechanical employees throughout the mill. Those arguments, the Company says, are inconsistent with the position the Union takes

here, which would deny the Company the right to use any of those other craftsmen to do the work at issue here.

The Company places significant reliance on former Permanent Arbitrator Fishgold's opinion in Inland Award 785, which involved the temporary assignment of mechanical employees in one seniority sequence (the mechanical sequence of No. 3 Cold Strip Mill East) to do work in a department typically serviced by another seniority sequence (the mechanical sequence of No. 3 Cold Strip Mill West). As is the case here, in Award 785 the employees were transferred to the other department to accomplish work in connection in a scheduled maintenance week, when the mechanical employees of the home department (No. 3 Cold Strip Mill West) were fully utilized in other maintenance tasks. In addition, the East employees were also assigned to the West Mill to repair a crane at a time when all of the East mechanical employees were working 40 hours and being offered overtime turns. In both instances, there were no employees laid off from the sequence.

Arbitrator Fishgold found that the Company's action was protected by Article 3, Section 1, the Management Rights clause, which, he said "gives the Company the right to direct its work force and make assignments in accordance with its operations needs and there is nothing in this provision which prevents the Company from making assignments across mill departments." He found the assignment to be a "reasonable exercise of management discretion and there was no evidence of arbitrary or bad faith motivation." He also denied the Union's claim that the

assignments violated the grievant's seniority rights under Article 13, Section 1, noting that the Company had the right to supplement employees in one seniority unit with employees from another seniority unit when employees in the first unit "are fully utilized."

The Company says the reasoning of Award 785 should control in this case, which it notes has a strong factual similarity. Thus, employees of one seniority unit were used to supplement employees from another unit while employees from that unit were fully utilized on other maintenance needs during a period of intense maintenance activity. However, if I were to find that the employees from Plant 2 had actually been displaced, the Company argues that nothing in Appendix N prevents the assignment at issue here. The Company says that the minimum base force does not mean that a certain number of employees must be working each week; rather, it simply refers to the number of employees established in the department and that number was not reduced in this case. Moreover, the Company says that the Mega Maintenance Agreement contemplates such movements, pointing to the language in paragraph [8] of the Mega Maintenance Agreement, quoted above.

The Union says that COEX 25 and COEX 27 do not represent occasions when the Union has argued that employees from around the plant could have been assigned to do the work typically performed by employees in other seniority sequences. In COEX 27, the Union says its argument was that the craft jurisdiction modifications of the Mega Maintenance Agreement allowed hundreds

of people in unassigned maintenance to be assigned to the machine shop. Moreover, the Union said it had tendered testimony that the Company had already used field forces machinists and mechanics in the machine shop and was clearly free to do so again. The Union says my opinion did not say that it would have been appropriate to assign the work at issue to assigned maintenance employees and that I even noted that such a determination could not be made on the record available in COEX 27

As for COEX 25, the Union says I found that there were sufficient electrical employees in field forces to do the work and that I did not say that the number of electricians available in the plant determined whether the work at issue was major or not. I said that there were 500 employees who were capable of doing the work and then said that whether there were jurisdiction problems was a matter to be considered in the reasonableness factors, particularly factor 11. In addition, the Union says that in 1992, when the work at issue in COEX 25 arose, there were people in assigned maintenance sequences above the base force, who could have been assigned to the MMD under appendix N.

The Union notes that craft employees are protected by craft jurisdictional principles as well as by seniority-based principles. It cited my opinion in Inland Award 949, which read former Permanent Arbitrator McDermott's opinion in Inland Award 813 to say that Article 13, Section 3 had been understood to give "some meaningful protection" to jobs in seniority sequences, with

the standard being whether employees in a given sequence had done certain recognizable work "with reasonable consistency and exclusivity." And, the Union says, not only may such work not be parceled out to other seniority sequences, but the Company must also be barred from transferring people across unit lines to do the work of other seniority sequences, which would have the same result. Otherwise the work would be "whittled away." This, the Union says, is the basis for seniority based jurisdiction.

Having said this, the Union claims that this case is not really a seniority case but, rather, is based on Appendix N and the Mega Maintenance Agreement (MMA). Appendix N, as originally constituted, created the Mobile Maintenance Services Department (referred to by the parties at various times as both the MMS and the MMD). That force of craftsmen was intended to supplement assigned maintenance forces during maintenance downturns. Part of the agreement created a minimum base force complement in assigned maintenance forces, which equated to 67% of the number of employees working in assigned maintenance in the various departments, shown in attachment A to the agreement. The employees listed on Attachment A could not be laid off or demoted as a result of the MMS, but only for reasons of departmental shutdowns, technological change, or decreased operations. The Union says that both Appendix N and the MMA were drafted to maintain Article 13, Section 3 principles. Paragraph AN9 of Appendix N provided that temporary vacancies in the MMS could be filled by volunteers from the assigned maintenance departments

and, if the number of volunteers was insufficient, the Company could assign to the MMS the craftsman listed on Attachment A who was not protected by the minimum base force. Those employees could then be used to supplement other assigned maintenance forces on maintenance repair downturns. The Company says, in fact, that craftsmen were assigned to the MMS and away from their home departments for years at a time.

In 1993, the parties modified Appendix N with the Mega Maintenance Agreement (MMA). That agreement eliminated the restriction that had allowed use of MMS forces only on scheduled repair downturns. Thereafter, MMS and other central maintenance forces, like field forces, could be used to work in all departments in the plant and their use was not restricted to repair downturns. The MMA also eliminated the 67% base force complement and created what amounted to a 100% base force complement. That is, all of the employees established in assigned maintenance forces at the time of the agreement constituted the new minimum base force. As noted above, these employees could not be "reduced" except for attrition, technological change or shut down of an operating department. However, they could be reduced "during periods of reduced operations in such department."

The key to the Union's argument in this case is that the assignment of Plant 2 mechanics to work in No. 7 blast furnace constituted a reduction of the Plant 2 sequence in violation of both the MMA and Appendix N. Appendix N limits the Company's

ability to lay off or demote assigned maintenance forces. The Union says that "demote" must mean assignment outside the sequence, since there is only one wage rate for a craftsman and, thus, no demotion within the sequence. This is reinforced by the MMA, which not only prohibits the "reduction" of the minimum base force, but also puts all assigned craftsmen in the base force. Thus, after the MMA, it was no longer possible for the Company to temporarily assign craftsmen in excess of the minimum base force to the MMS and then have them assigned throughout the plant to assist assigned forces. In effect, the Union says that while the MMA may have permitted the MMS to work throughout the plant without the repair downturn restriction, the Company lost the ability to supplement MMS forces by adding assigned craftsmen who were not protected by the base force complement. The Union sees the instant case as one in which the Company seeks to circumvent those limitations.

Having lost the ability to assign certain assigned maintenance forces to the MMS, who could, in turn, then be used in the operating departments, the Company simply claims in this case that the assignment at issue was not to the MMS at all. Rather, the Company says that it has the right to assign employees across seniority sequence lines pursuant to Award 785. But, the Union says, that case did not take into account the rights of employees under Article 13, Section 3 and it preceded Appendix N and the MMA. The Union's case, then, depends on it s claim that when the employees from Plant 2 were assigned to No. 7

blast furnace, they were "reduced" from their sequence, in violation of their rights under Appendix N and the MMA.

The Union argues that the Company recognized that it did not have the right it claims in this case and, for that reason, that it has tried in other contexts to negotiate the right to assign employees across seniority unit lines. In particular, it points to Appendix T and to the ISIP Mutual Agreement. If the Company had the right it claims here, then the part of those agreements that permitted cross sequence assignments would have been unnecessary.

Findings and Discussion

This is a very difficult case. The issues surrounding it could have profound effects on the Union's ability to protect traditional craft jurisdiction and seniority rights. I am not persuaded, however, that the dire effects predicted by the Union are actually at issue in this record. The Union says that if the Company could move Plant 2 craftsmen to No. 7 blast furnace for a few days, then there is nothing to stop it from doing so for a few weeks or a few months, thus eroding the concept of craft jurisdiction and seniority. But this is not a case in which the Company asserted the general right to make cross-sequential assignments without regard to the traditional jurisdiction of particular sequences. Moreover, the fact that the parties have negotiated certain circumstances in which such assignments can be made may be some indication that they have recognized limitations

on the Company's right. All that happened here is that the Company assigned a group of craftsmen to do a job of limited duration at a time when the craftsmen of the home department and all available MMS forces were working in connection with the same repair downturn, and at a time when no craftsmen were laid off or otherwise displaced from either department. Those are the facts that must guide the decision in this case.

I disagree with the Company's claim that paragraph [8] from page 7 of the MMA (quoted above) recognizes the right to make the kind of assignment at issue here. Paragraph [8] is clearly tied to paragraphs [5] and [6]. Paragraph [6] says that craftsmen can be reduced from their sequences because of reduced operations in their department or (for unassigned craftsmen) because of a reduced demand for that craft sequence. "Craftsmen covered by a minimum base force," that is, assigned craftsmen, who are displaced, will be "reassigned" to central maintenance. Paragraph [8] the says that "reassignment" shall not be made on the basis of an artificial reduction in work. The word "reassignment" in paragraph [8] seems to me to be related to the use of the same word in paragraphs [5] and [6]. Thus, paragraph [8] was not intended to cover routine assignments across seniority sequence lines. I need not further speculate about the meaning of this provision. Since I find that it is not at issue

in this arbitration, its full interpretation can wait for another day.[1]

I am also not able to find great relevance in the seniority provisions the Union pointed to in its evidence and argument. Frankly, I have significant difficulty on this record understanding which side proposed paragraph E of Appendix T. I also have some doubt about whether this is even a permitted line of inquiry, given the restrictions of Appendix C. Nevertheless, whoever may have proposed the language, it says explicitly that the Company retains its rights under Article 13, Section 1, a clause that seems clearly intended to save whatever rights the Company had gained under Award 785. I recognize that the Union says the instant case is based on Article 13 Section 3, and not section 1, but the point is that, by negotiating Appendix T, the Company did not concede that it had no right to make assignments across seniority sequence lines.

Union Exhibit 1, the amendment to Article 13, Section 3, does give the Company the right to cross seniority sequence lines in certain circumstances, which raises an inference that it could not do so otherwise. And the agreement excludes craft sequences. However, this does not necessarily mean that the parties understood that craft jurisdictional lines could never be

---

[1] My conclusion that paragraph [8] cannot be relied on by the Company should not be deemed an endorsement of the Union's claim that paragraph [8] was intended to apply only to unassigned craftsmen. Indeed, the reference in paragraph [8] to craftsmen "with or without a base force complement" raises considerable doubt about that contention. But, as I have already observed, interpretation of this provision can await an appropriate case.

crossed. It may mean simply that craft forces were not to be part of the solution to the problem that spurred the amendment. The Union offered testimony that breakdowns and other emergency situations sometimes meant that production employees had nothing to do and were sent home. The amendment simply allows the Company to use such "affected" employees for productive purposes. Given that purpose, it is hard to understand why the parties would have included craft employees in the amendment.

Similarly, it is hard to read much into the parties' negotiation of the ISIP Agreement, which was influenced by factors not at issue here. It is true, as the Union says, that one part of the agreement creates a "consolidated seniority list" consisting of craftsmen who are not in the "core groups" of craftsmen assigned to the former departments. The employees on the consolidated list became a "supplemental available work force," though they were to be assigned to their former sequence if sufficient work was available there. Otherwise, they could be assigned across the former department lines. But this appears to be an agreement about how the craftsmen on the consolidated list were to be scheduled on a weekly basis, an issue not present in this case. The agreement does not concede that no short-term cross sequence assignments were possible. Moreover, given the exigent circumstances that led to the ISIP Agreement, one should be hesitant to extract certain provisions as admissions of normal practice.

The fact that I reject the Company's reliance on paragraph [8] of the MMA, however, does not mean that the Company cannot prevail. Its principal argument is that its action was permitted by the terms of Inland Award 785. I recognize that the focus of this case differs from Arbitrator Fishgold's opinion in Award 785. There, the seniority issue concentrated on whether the employees of the host department lost any privilege to which their seniority entitled them. Here, by contrast, the Union does not seek to protect the employees of No. 7 blast furnace (though it does not concede that it could not have brought such a case) but, rather, the craftsmen in the Plant 2 blast furnaces who, the Union says, have a right to work in their home sequence and not be displaced. And, the Union says, the conclusion that they were displaced is inevitable.

There is no contention that the craftsmen from Plant 2 did not have work available to them in their home sequence. Nor is there any claim by the Company that their numbers could be reduced because of technological advance or the shut down of their department. The Union's claim boils down to its argument that employees are reduced or displaced from their sequence every time they work outside it.

There is some plausibility to this argument, especially given the apparent limitation on the Company's ability to make short term assignments to the MMS following adoption of the 100% base force in 1993. However, all that happened here was a brief, limited-time assignment to work in the No. 7 blast furnace at a

time when all No. 7 blast furnace assigned craftsmen and all available MMS craftsmen were engaged in the same project. The assignment took portions of two weeks and the Plant 2 craftsmen were assigned to their ordinary Plant 2 work during both of those weeks. Apparently, they both began and ended their weeks doing work they typically performed in their home sequence. In these circumstances, I have difficulty concluding that they were "displaced" or "reduced" from their sequence.

In the first place, I find that Fishgold's decision in Award 785 was evidence to these parties that employees could sometimes be expected to work outside their home sequence. I understand the Union's criticism of Inland Award 785. However, there is no way I can ignore the decision. Obviously, the Union did not argue Article 13, Section 3 in that case, and the opinion did not consider Appendix N[2] and it predated the Mega Maintenance Agreement. However, the concept of craft jurisdiction did not originate with Appendix N. Yet, despite a significant body of arbitral precedent both at Inland and in the industry, Fishgold found that the assignment at issue there was permissible.

Given Award 785, it is hard to understand why the parties would have understood the subsequently negotiated MMA to mean that craftsmen were displaced from their sequence even when they undertook limited, short term assignments in other departments.

---

[2] Actually, Award 785 was issued after the effective date of Appendix N, though the incidents complained of in the case occurred prior to Appendix N. Appendix N, then, was not a factor in the case.

That is exactly what Fishgold permitted in Award 785. The parties must have understood, then, that there were at least some instances when a craftsman could be assigned work outside his home sequence, yet not be considered displaced for purposes of Appendix N and, later, the MMA. Moreover, nothing in the MMA expressly rejects Award 785 or defines "displace" so as to render it inoperative. Nor can the Union find much support for its argument in the portion of Appendix N that prohibits demotion of craftsmen. Had the parties intended to completely prohibit the short-term assignment of craftsmen outside their sequence, surely they could have used a more descriptive word than "demoted," which already had a recognizable meaning to these parties.

The Union's obvious worry is that the exceptions will swallow the rule. But I cannot delineate in the abstract the extent to which an employee can work outside his sequence, yet not be displaced, as that term is used in Appendix N and the MMA. It is fair to observe that in Inland 785, Arbitrator Fishgold did not give the Company a broad license to make such assignments. He noted that the craftsmen of the host department were fully utilized and that the work at issue was of short duration. He also noted that the Company's action was not arbitrary, which may mean that the Company did not simply make its assignment without acknowledging traditional seniority rights. And many of the factors that were present in Inland Award 785 also exist here.

I also find merit in the Company's argument that the base force provided by Appendix N and the MMA does not necessarily

mean that a precise number of craftsmen must be working in the sequence at any one time. Obviously the number of active employees is reduced because of illness, vacations, and assignment as temporary foreman. But the absent employees are still established in the sequence. Here, there was a short term assignment to perform a limited job at a time when no one from the home department could have done it. Perhaps the Company could not assign employees from one sequence to work on equipment regularly maintained by members of another sequence for protracted periods of time without having reduced the first sequence. But those facts are not at issue here.[3]

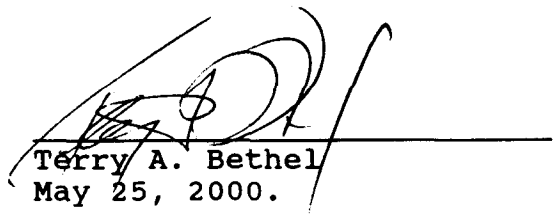
In any event, if the Plant 2 craftsmen in this case were not actually displaced from their sequence, as I have found they were not, then the protection of Appendix N and the MMA claimed by the Union does not apply. Therefore, the grievance must be denied.

---

[3] I also have some sympathy for the Company's claim that, had it contracted out the work at issue here, the Union might have protested that there were capable craftsmen available in the plant, even though I may have some disagreement with the Company's interpretations of COEX 25 or 27 tendered in this case.

AWARD

The grievance is denied for the reasons outlined in the Findings.



Terry A. Bethel
May 25, 2000.