IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

Award No. 980

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case from 1994 concerns the Union's claim that the Company violated the Agreement when it assigned certain fork lift operation to the masons in No. 2 Cold strip. The case was tried in the Company's offices in East Chicago, Indiana on January 17, 2001. 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 Manager of Arbitration and Advocacy
M Gronewald.....Section Manager, MMD North Core
T. Kinach.....Section Manager, Union Relations
T. Davis.....Section Manager, Ext. Trans.
R. Hughes.....Contract Admin. Resc., Union Relations
J. Norris.....Supervisor - Masons
E. Krzyston.....Retired Mason
J. Haugh.....Retired Mason

For the Union:

M. Mezo.....USWA Staff Representative
D. Shattuck.....Chairman Grievance Committee
F. Turner.....Witness
E. Barrientez.....Griever
D. Lee.....Witness

Background

Most of the production and maintenance employees at the Harbor Works are represented for purposes of collective bargaining by Local 1010 of the USWA. Historically, however, the masons who repair and install refractory work in and around the mill have been represented by Local 6 of the Masons Union. Local 1010 (the Union) filed the grievance in the instant case when the Company assigned a fork lift truck primarily for the use of the masons in No. 3 Cold Strip. Prior to that time, the Union asserts that USWA represented employees had supported the masons when they needed fork lift assistance. The Company agrees that USWA represented employees in the mobile equipment sequence in the Cold Strip Mill assisted the masons; however, it also says that there were many occasions when the masons used the fork lift to assist their own work.

Masons Supervisor Jim Norris testified that masons work in various areas at the plant, including in the cold strip, where they work on the annealing furnaces, the bases, and various other equipment. One of the furnaces is always down for maintenance. In 1994, when the grievance was filed, there were five or six masons assigned full time in the cold strip. Other masons were assigned to the mill when there was a major project, which might occur once a month. Norris said that the fork lift that precipitated the grievance is a small, 9000 pound

capacity unit. Employees are trained to operate it in eight hours. He said the masons use the fork lift as a "tool." They move refractory material to and from various jobs, move material around their work areas, and use it for housekeeping. The masons only use the fork lift to support mason work. In addition to the fork lift, masons also operate a flat bed truck, various platforms or man lifts, overhead cranes and hand carts. He said this equipment is used throughout the plant, including the blast furnaces, 2BOF, 4BOF and the 28" mill. On cross examination, however, Norris acknowledged that he had no personal knowledge of fork lift usage by masons in any departments other than the cold strip and 4BOF.

Norris testified that masons have been operating fork lifts at the cold strip mill since 1987 and that usage varies from one to five hours a day. Norris said that he was a working foreman in the cold strip mill from 1987 to 1993 and that he often used an electric fork lift that he got from the mobile equipment area. He said he used the fork lift every day, as needed, and that he thought it was left in the mobile equipment area to back up the fork lift used for the galvanize line. In 1994, the Company assigned a fork lift to his area, so that it was no longer necessary to "chase after one" when the masons needed it. He said the fork lift was not used exclusively by masons.

James Haugh worked as a mason in the plant from 1953 until his retirement in 1996. He said he used a fork lift in the open hearth, which closed in 1985. He began work at No. 3 Cold Strip in late 1993 or early 1994 and regularly used a fork lift there, in time periods varying from one to five hours a day. On cross examination, he said he was not trained to operate a fork lift until 1994 and that he did not get his operator's license until then. However, he used a fork lift before he was licensed to do so. Ed Krzyston was a mason from 1968 until his retirement in 1997. Prior to 1994, he used a fork lift in No. 3 Cold Strip on a daily basis to stock mason jobs,

to move material around in the storage area, and to clean up debris. Kryzston said his procedure was to approach a USWA represented fork lift driver to move material for him, but if one wasn't available, he would arrange to borrow the fork lift when the driver wasn't using it. He said he also used a fork lift in other areas of the plant.

On cross examination, Kryzston said he was assigned to the cold strip mill in 1993 and that, while he had worked there before that time, such assignments were a "rarity." He said he also drove a fork lift in the RHOB and, on rare occasions, at 4 BOF. He said he could not remember whether the person he borrowed the fork lift from was black or white and he said the person was not in the hearing room during the arbitration. Kryzston said it was common for him to drive the fork lift four hours a day and that it was available because the employee assigned to the fork lift also drove a pick up truck with a lift on the back.

Terry Davis was the Section Manager of Services in 1994. Prior to 1994, Services was responsible for the fork lift and for labor support of the masons. After a reorganization in 1994, the fork lift was under the control of operations planning. Davis said that beginning in 1984, an employee called a power trucker was assigned four hours on the power truck and four hours on the fork lift. Actual working hours varied on these two pieces of equipment, though the employee was paid as if he spent four hours on each. Davis said there were times when the power trucker would be on the fork lift for four hours and other times when he operated it only for a couple of hours in a turn. I understood this testimony as intended to bolster the Company's claim that the fork lift would have been unoccupied and available to the masons for several hours on most days.

Davis said just about everyone who worked at No. 3 Cold Strip operated a fork lift, including the masons and MMD employees, when they were assigned to the department. The

electric fork lift, in particular, was easy to operate. Davis acknowledged that there were times when he assigned a fork lift operator from his department solely to support the masons, but this happened only during outages or other large jobs, when there was a big demand for the service. On a day-to-day basis, there was a full time fork lift operator (who apparently also operated a power truck) and he was supposed to help the masons, though he had lots of other work, as well. Davis said the employee assisted the masons on a "catch-as-catch-can" basis. He said there were times when the fork lift operator was too busy to help the masons and that he got complaints from the masons about it. Davis did not know exactly what precipitated the Company's decision to buy a truck for the masons to use, though he assumed it was in response to complaints from the masons about lack of service from the power truck operator.

Davis said the purchase of the fork lift to assist the masons had no effect on the number of employees scheduled as power truckers. There was one such employee per day turn both before and after 1994. Like the power truck operator, the masons also worked day turn, except when there was a major job, when they worked around the clock. Davis said the fork lift operator was able to assist masons on most turns, but that masons also drove the fork lift on most days. He said he also got numerous complaints from the galvanize line, because masons had appropriated their fork lift. There were also fork lifts at the mobile equipment department that the masons borrowed. And, Davis said, he sometimes staged a fork lift at major mason jobs, without anyone assigned to operate it. This was more likely on back turns when the masons were involved in a major project. In such cases, either the masons or a laborer would operate the fork lift.

On cross examination, Davis said the masons only operated the fork lift "on occasion" before 1994. He also said that the operation was more likely to be on off turns than on day turn,

when there was an operator assigned to the lift. He also stressed the importance of the gas fork lift to the operation, but said that he allowed masons to operate it because they were a "stable group" and that they were "familiar faces." The Union asked why the masons would complain about a lack of service if they had access to a fork lift. Davis responded that the masons did not always know whether the fork lift operator was, though Davis knew because it was his job. The Union also questioned Davis' testimony that the masons were able to use a spare fork lift from the galvanize line for up to five hours a day on back turns, since it was Davis' responsibility to make fork lifts available to galvanize. Davis said it didn't really affect him, since there were always tractors available for the galvanize line, which did not use them on a constant basis. However, he said he did on occasion ask the masons not to use the galvanize fork lift. Davis also said that he frequently worked back turns and that from 1984 to 1990, he was on day turn only about one-third of the time.

The Union called Dwight Lee, who drove a fork lift as an applicant in No. 3 Cold Strip. He said he worked both day turn and 4 to 12, but that he most often drove a fork lift on day turn. He said he actually spent most of his time on the fork lift and that he did not often drive the power truck. I understood this as being intended to counter the Company's claim that the fork lift was often unoccupied and, therefore, available to the masons. Lee said he usually spent 8 hours a day on the fork lift. When asked if he ever assisted the masons, Lee hesitantly replied, "sometimes," and then said that he did so about once or twice a day, on average. He denied ever seeing masons operate a fork lift and he said they would not have done so four or five hours a day, as the Company claims, because masons did not have that much fork lift work to do. Lee said if the masons needed help, the supervisor would catch him and tell him and that he would go do the

work, "if he had time." He did not say what happened if he didn't have time. Lee said the expediter also sometimes dispatched him to help the masons. He denied the testimony of one of the Company's witnesses that masons sometimes "brokered" deals with him to use the fork lift. Lee said there was one fork lift operator scheduled on days, and that most of the time he was the one. He said a mason never ran his fork lift and that he never saw a mason operate a fork lift on the 3 - 11 turn.

On cross examination, Lee acknowledged that he moved material all over the cold strip mill and that he was seldom in the anneal area where the masons generally worked. However, he said he traveled through the area "the whole day." He also said there were "many days" when he did not have time to do anything for the masons. He estimated that from 1987 to 1994, he spent about 75% of his time operating the fork lift, even though there were also employees who were established in the sequence.

Robert Ganz works in the mobile equipment sequence and between 1987 and 1994 he was the oil house truck operator. Although fork lift operation is included in that occupation, Ganz said he very rarely ran the fork lift. He was the employee who drove the pick up truck, the Union says, not the fork lift operator, which one of the Company witnesses had claimed. Ganz said he also worked as an expediter in the storeroom. In that capacity, he dispatched the fork lift operator to do work for the masons, including unloading trucks. He said he thought there were more than one or two such assignments a day, thus disagreeing with Lee's estimate. Ganz said he worked in the storeroom and that if the fork lift was not being used, it was parked in front of the storeroom. He said he never saw a mason get on the fork lift. On cross examination, he

acknowledged that he seldom got to the anneal area. He also said there was no fork lift driver assigned to assist the masons, and that such work would be "almost incidental."

The Company points out that the case did not originate as one in which the Union claimed that work was transferred outside the scope of the bargaining unit. Rather, the original grievance protested that fork lift work was being performed by a mason supervisor. The Company says this was an implicit recognition that bargaining unit masons could do the fork lift work, since the Union had never protested any such activities by them. The Company says its witness testified that the masons regularly operated fork lifts prior to 1994 at No. 3 Cold Strip and elsewhere in the plant. The Company agrees that masons looked to the fork lift operators to assist them, but that they operated the equipment themselves when necessary. And the Company points particularly to Lee's testimony that he only made one or two lifts a day for the masons. This obviously would not have met the masons' needs, the Company says, since masons testified that they sometimes operated the equipment for up to five hours a day. The Company relies on Inland Awards 810 and 925, which it says recognize that the Union could acquiesce in the assignment of bargaining unit work outside the unit. The Company also stresses that the masons are Inland employees, not contractors, and that the fork lift is merely a tool that assists them in their work.

The Union obviously agrees that the second step grievance focused on the performance of work by a mason supervisor. But it points out that the third step minutes make it clear that the Union protested the movement of work outside the bargaining unit. The Union places principal reliance on a 1986 agreement entered into between the Local and the Company concerning operation of a new vacuum degassing facility, which the parties call the RHOB. As explained in Inland Award 901, the RHOB Agreement allowed USWA represented employees to do certain

gunning work in the facility that would otherwise have fallen within the jurisdiction of the masons. In return, the masons were given the right to do what a Company representative testified in Inland 901 was "ordinary production work." This work was listed on Attachment E to the RHOB Agreement, which listed such work as "fork lift operation; crane operation; [and] welding," among others. The Union points out, however, that this agreement was to be limited to the RHOB and it say that the Company improperly extended it to the cold mill, which is what led to the grievance in this case.

The Union notes that the effective date of the RHOB Agreement was August, 1986. The third step minutes indicate that just one month later, the Company started training masons to operate fork lifts in the cold mill. But paragraph 14 of the RHOB Agreement limits the right to assign such work to the RHOB and says expressly that the agreement will not apply to or set a precedent for any other area. But that must be what happened, the Union says. If the Company already had the right to assign masons to operate fork lifts, there would have been no need to include fork lift operation on Attachment E to the RHOB Agreement. A Company witness in Award 901 characterized the work listed on Attachment E as a "quid pro quo" given to the masons in return for their agreement to surrender their right to some refractory work. But if the masons already had the right to operate fork lifts, then the Company would not have bothered to list it on the Attachment. Stated differently, this would not have been compensation for the masons, since they could already operate fork lifts anyway. Thus, the Union says the inclusion of fork lift operation on Attachment E is an acknowledgment by the Company that it had no right to assign that work to the masons, absent the RHOB Agreement, which was not to apply outside the RHOB.

The Company responds to this argument by pointing to the introductory phrase of paragraph 14 of the RHOB Agreement, which says, "Notwithstanding the positions of the parties regarding work jurisdictions associated with refractory maintenance," and then goes on to say that masons can do the work on Attachment E without challenge by the Local Union. The Company says the quoted language is intended to reflect the fact that the parties may have disagreements about whether certain work falls within the responsibility of one group another. However, in the RHOB Agreement, they put those possible disagreements aside and agreed expressly about what could and could not be done. But this does not mean, the Company says, that it acknowledged that masons could never operate a fork lift. Rather, the parties merely agreed that whatever their general contentions, the parties would put them aside as agreed in the RHOB.

The Union says that the combined effect of the RHOB Agreement and Inland Award 901, which relied on some of the same arguments presented here, means that the fork lift work is recognized as belonging to the USWA. And, the Union says, that means the Company has the burden of establishing that something has happened to destroy that jurisdiction over the work. But there are no such factors here. The Union says the Company tries to rely on Union acquiescence in performance of the work by masons, but it says the Company's evidence is not adequate for this purpose. It says Norris, the mason supervisor, had no personal knowledge that the masons performed fork lift operation anywhere but in the cold mill, other than the RHOB. In fact, however, when the Union asked Norris about whether he knew personally of masons operating the fork lift in other departments, he relied that he knew they did in 4BOF, not in the RHOB. The Union also says that Norris' testimony conflicted with that of Davis, the Services Supervisor. Norris testified that when he needed a fork truck, he would take one from the

Mechanical Equipment (ME) shop. But Davis said the electric trucks – which were principally used by the masons – were taken from the ME shop on the off turns, and the masons worked days.

The Union says that Haugh's testimony does not help the Company because he did not get his operator's license until 1994 and it speculates that all of Haugh's testimony about operation of a fork truck in the cold mill came after the grievance was filed in 1994. The Union also questions Kryzston's testimony that he operated the gas truck four or five hours a day, and that he made deals with the regular operator for its use. It points out that Lee was the principal operator at this time and that Lee is black, though Kryzston said he could not remember whether the employee he dealt with was black or white. The Union also points to Lee's testimony that he was on the truck 8 hours a day and that it would not have been available to the masons. The Union also notes Kryzston's testimony that when he needed a lift he first approached the fork lift operator, which the Union says is a recognition that this was their work.

The Union questions whether Davis even knew where the fork trucks were, even though he was responsible for them and, therefore, how he could have known who was operating them. The Union also points to testimony from Davis that the fork lift operators were often too busy to respond to calls for the masons. If that is the case, the Union asks, how could the fork truck have been available for the masons to use? Finally, the Union says that Inland Award 901 says that the question of whether bargaining unit work can be assigned outside the bargaining unit must be addressed on a plant-wide basis. Even if the Company's claim is true that masons used the fork trucks in the cold mill, that does not mean that Local 1010 lost the right to the work plant-wide. One department cannot waive the jurisdictional rights of the Union, it argues.

Findings and Discussion

The Company does not claim in this case, as it did in Inland Award 901, that the Union cannot make jurisdictional claims to certain work. I discussed that issue at some length in that opinion, a case in which even the Company's actions conveyed its understanding that the recognition of the Union as representative of certain groups of employees carried with it some notion of the work those employees were expected to do. I also found that the parties' practices with respect to work assignments helped shape their understanding of who could do which work. The issue, as I stated it in Inland Award 901, is "whether there is evidence that the parties understood the work at issue to be part of the duties associated with a particular bargaining unit." In particular, I said in that case that if there was evidence that the disputed work was shared between USWA employees and employees in other bargaining units, then the Union could not claim exclusive jurisdiction over the work. I also noted that it should be harder for the Company to take work away from a bargaining unit than it would be for the Company simply to move it from one sequence to another, which is also an instance in which the parties argue about exclusivity. But I reiterated that the issue to be decided is "whether the parties have administered the Agreement with the understanding that certain work is to be done only by members of the bargaining unit."

In Inland Award 901, I focused on the body of work at issue. Thus, I found that the issue was not merely the installation of anchors, which the evidence showed had been done mechanically by the masons for a long period of time. Rather, the question was whether the Company could assign masons to weld on the anchors, when the evidence showed that prior to the assignments at issue in that case, all welding had been done by members of Local Union 1010.

Similarly, the issue is narrow in this case. It is not whether the masons can drive fork lifts for any of the purposes for which such equipment is operated at the Harbor Works. Nor, for that matter, is there any issue before me about whether anyone else can operate a fork lift. Rather, the narrow issue is whether the masons can operate this equipment solely to assist their own activities in the cold strip mill.

In the instant case, there is some evidence of concurrent performance of the work at issue, evidence that was lacking in Inland Award 901. In that case, the Company began assigning welding work to the masons in about 1988, claiming that welding was part of the mason's job. But it was those assignments that were at issue in the case. There was no significant evidence of prior welding by the masons, other than a 1980 example in the BOF, but the Union had grieved that assignment, later withdrawing the case without prejudice to its right to resurrect the issue. I found, then, that with respect to the welding part of the case, the evidence supported the Union's claim that the Company had recognized that welding work belonged to Local 1010. In this case, however, there is evidence that the masons performed some of the contested work prior to the filing of the grievance in 1994. The actual volume of work done before that time is in dispute, with the Union contending that there was none, and the Company's witnesses claiming that masons frequently drove fork lifts. And, of course, complicating the matter is the fact that the grievance was almost seven years old by the time the case was tried. I did not have the impression that any of the witnesses fabricated their testimony. However, after so long a delay, it is fair to question how accurately the witnesses remembered day-to-day work events.

I think there was probably some wishful remembering on both sides in this case. For example, I have difficulty understanding why masons would need to operate a fork lift for five

hours or, if such a need ever arose, why it happened very often. No one explained this, even though there were two masons and a mason supervisor at the hearing. But I am equally skeptical of testimony from Union witnesses that they never saw a mason operate a fork lift. Lee, for example, said that he often did not have time to assist the masons and that on the days when he did, he made only one or two lifts a day. And there was some hesitation in his voice about admitting even that, when he was first asked about it.

Even if the masons seldom had five hours of fork truck work, it seems likely that they would have had need for someone to move materials more than once or twice a day. The masons, after all, install brick and refractory and one might expect their work area to move as the work advances. Moreover, they would have a constant need to have supplies brought to the job site. It seems likely, then, that Lee could not have served all of their needs and the Union offered no other explanation of how the work could have been accomplished if the masons did not get on the trucks themselves.[1] Although the testimony of Norris and Haugh and Kryzston was not free from difficulty, I thought they credibly claimed to have driven fork lifts to assist mason operations in No. 3 Cold Strip and, to at least some extent, in certain other areas of the plant. Haugh, for example, operated a fork lift in the open hearth and Norris said he was familiar with masons doing so in 4BOF. It also seems likely to me that the other employees in the department -- including the

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[1] Ironically, on the issue of how often Lee worked, both sides take a position that may be contrary to their best interest. The Company questions whether Lee could have been on the job 75% of the time between 1987 and 1994, since he was only an applicant. The Union insists that he was there most of the time. But given his testimony that he only made a lift or two a day for the masons and frequently had no time to help them at all, it serves the Company's interest and hurts the Union's interest to have him on the job. Of course, the parties' positions are explained by their interest in minimizing or maximizing Lee's presence in the department as it reflects on his claim that he never saw a mason operate a fork truck.

employees who sometimes helped the masons -- knew, or should have known, that masons were driving fork lifts to assist their own work.

It is true, as the Union claims, that the great bulk of the evidence in this case concerned the operation of fork lifts by masons in one department -- No. 3 Cold Strip -- and that I said in Inland Award 901 that the focus should be on the plant. But it is important not to take that comment out of context. I did not say, as the Union claims, that the lack of protest by one department could not undermine the Union's claim to jurisdiction over the work in the entire mill. That was not an issue in that case and it is not an issue in this one. Rather, the issue in Inland Award 901 was whether the Company had assigned welding work to masons. The Company argued -- and I agreed -- that in assessing jurisdictional claims, it was appropriate to look around the plant to determine whether the requisite exclusivity existed. That did not mean that examples of dual jurisdiction had to exist all over the plant; rather, it meant that the Union might lose its claim of exclusivity even if the assignment outside the bargaining unit occurred in a department that was not even at issue in the case.

The parties did not submit much evidence about what happened outside No. 3 Cold Strip. Two of the Company's witnesses mentioned that masons had driven fork lifts in other departments, which is some evidence of what happened elsewhere. But the Union, which had the burden of proof in this case, did not submit evidence about exclusivity in other departments. That is, it did not offer testimony from employees in other departments where the masons work indicating that the masons never drove fork lifts in those areas. Both parties focused on No. 3 Cold Strip. In my view, the evidence from that department is sufficient to support a finding that masons drove fork lifts on a regular basis and that the USWA employees and Union officials in

the department never protested until 1994, when the Company put a fork lift at the masons' disposal.

The Union says, however, that it should not have the burden of proof. It claims that once it establishes exclusive jurisdiction over a body of work, it is up to the Company to prove some reason justifying a change. And the Union says the RHOB Agreement is sufficient to establish the Company's understanding that fork lift operation belonged to members of Local 1010. It is true that the RHOB Agreement included fork lift operation as one of the pieces of work given to the masons in return for their agreement not to contest the assignment of refractory work to USWA represented employees. Moreover, the great bulk of the evidence in this case supports the Union's claim that masons did not begin driving fork lifts at No 3 Cold Strip until after the RHOB Agreement. This evidence is troubling and does raise the question of whether the Company impermissibly extended the concessions made in the RHOB Agreement to other areas of the plant. There was, however, some evidence that masons had operated fork lifts around the plant prior to the RHOB Agreement. That evidence and other considerations prevent me from concluding that the RHOB Agreement is sufficient to establish a Company agreement that fork lift work is exclusively within the jurisdiction of Local 1010, except at the RHOB.

The Union points to the paragraph of the RHOB Agreement in which the parties agreed that masons could do certain work without protest from Local 1010. That language, in pertinent part, is as follows:

> Notwithstanding the positions of the parties regarding work jurisdictions associated with refractory maintenance, Mason (Local 6) employees assigned to the Vacuum Degassing Facility will perform the functions listed in Attachment E, with the understanding that no grievance will be filed by the [Steelworkers Union] contending such work falls within the jurisdiction of the [Steelworkers Union]. ... It is understood that this work arrangement is

not intended to set a precedent or be applicable to any other situation at the plant. (Emphasis added).

The Union places particular emphasis on the underscored portion, above, which it says "left the door open" for the Steelworkers Union to recapture any other fork lift work done in the future. The Union says this means that the parties understood there was a body of forklift operation work to assist the masons and that any work in excess of the RHOB work would require the parties to negotiate about how it will be performed. Thus, the Company understood that forklift operation was USWA work.

This interpretation overstates the effect of the highlighted language. In the RHOB Agreement, the Union agreed that it would not challenge management's assignment of fork lift (and certain other) work to the masons in the degasser. And the Union was careful to obtain language which said that making this concession in the RHOB would not bind it elsewhere. This means, then, that the Company could not rely on the RHOB Agreement to start assigning fork lift work to masons in other parts of the plant. But it is not necessarily true that the language amounts to a Company concession that masons could not operate fork lifts in any other department. All it says is that the Company cannot rely on the RHOB Agreement to make such assignments.

But the Union argues that if the Company had not understood fork lift operation to be beyond the scope of mason duties, it would have had no reason to include it in this section of the RHOB Agreement. After all, the Union points out, the masons were getting work they presumably otherwise would not have had to replace refractory work they were ceding to the USWA bargaining unit. This is a perfectly plausible interpretation of the Agreement. But the

Company also offers a plausible construction when it points to the introductory sentence which says the parties are making the agreement "notwithstanding their positions regarding work jurisdictions associated with refractory maintenance." This could mean, as the Company claims, that the parties disagree about whether certain work is exclusive to one bargaining unit or the other, but they made the agreement for their mutual benefit anyway.

Faced with these conflicting interpretations, I return to the test I set out above: have the parties administered the Agreement with the understanding that certain work was to be within the exclusive jurisdiction of the bargaining unit? I find that they have not. The evidence supports a finding that masons operated the fork lift to assist their own work in the No. 3 Cold Strip and there was at least some such operation in other parts of the mill. The mason may have looked first to the fork lift operator to do the work. After all, it was his job to operate the truck and the masons were principally concerned with the installation of brick and refractory. But at least when the fork lift operator was not available, the masons did the work themselves. And despite the Union's claim that it understood the RHOB Agreement to mean that masons were never to do this work anyplace but the RHOB, the Union never protested when the masons did the work over a period of at least seven years. Indeed, there was evidence that some such work occurred in other departments even prior to 1987 and the Union never protested that either.

It could be that no grievance was ever filed because the work never came to the attention of the Union. I have expressed sympathy for similar Union arguments in other cases, reasoning that Union officials cannot always be expected to be aware of every potential violation of the Agreement. But that is not the only explanation that makes sense in this case. It seems likely that, if no bargaining unit employee ever reported this to the Union, or if knowledgeable grievers

never took action, it was because everyone understood that masons were sometimes expected to get on the fork truck and do the work themselves. Indeed, one might question whether the grievance at issue here would ever have been filed had not the Company put a fork truck at the masons' disposal, or if, as the Company suggests, a mason supervisor had not driven the fork lift.

I find that the evidence supports the conclusion that masons have regularly been assigned the work of driving fork lifts in support of their activities in No. 3 Cold Strip without protest from the Union. Accordingly, the grievance is denied.

AWARD

The grievance is denied.

Terry A. Bethel
April 16, 2001