IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and AWARD 989

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company improperly required bidders to the Train Operator sequence to have switching experience. The case was tried in the Company's offices on September 10, 2001. Pat Parker represented the Company and Bill Carey presented the case for the Union. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy
N. Sucevic.....Integrative Planner, Rail Operations
C. Willoughby..Union Relations Intern

For the Union:

B. Carey.....International Representative
D. Shattuck....Grievance Committee Chairman
R. Campos.....Griever
C. Kerr.....Assistant Griever

Background

The Company conducts extensive rail operations within the Indiana Harbor Works. Over the years, apparently due mostly to technology, the number of employees assigned to train crews has diminished. In the 1960's, for example, there was a locomotive engineer, a conductor, and one or two switchmen. The engineer ran the train from internal controls, the switchmen operated the switching equipment within the plant, and the conductor was in overall charge of the operation. In the 1980's, these jobs were located in two different sequences. The locomotive engineer was in a separate sequence and the conductor and switchman were in the Switching sequence. By 1985, there was a train operator position in both the Locomotive Engineer sequence and the Switching sequence. This was not explained at the hearing, though it may have been due to the fact that the position in the Switching sequence was followed by "(radio)". This suggests that the remote control operator had been located in the Switching sequence. In 1989, the current sequence was created by combining the Locomotive Engineer sequence with the Switching sequence.

By 1997, there was an Operator Train sequence, which included the train operator, the conductor (formerly in the switching sequence), a conductor II, and a learner switchman. By May 2000, there was a two step sequence consisting of train operator (the higher paid job) and conductor. The parties agree that because the combination of jobs caused a surplus of employees, no one entered the sequence for almost twenty years.

This case arose when the Company posted for fifteen vacancies in the sequence in March, 2000. Among other requirements, the posting said, "must possess switching experience."

Although the need for switching experience did not necessarily eliminate internal bidders, it significantly restricted the opportunity for bargaining unit employees to bid into the sequence. The Union grieved, claiming that the switching experience requirement was "overly restrictive." Its principal contention - indeed, the only one advanced at the hearing - is that the Company is required to offer switching training to inexperienced bidders because of a grievance settlement and a series of mutual agreements. The Union does not necessarily claim that the Company cannot hire experienced employees for the sequence from the outside. In fact, one of the grievance documents submitted by the Union contained a Company assertion that there had been history of doing so, which the Union did not contest. However, the Union says that even if the Company can hire from the outside, it also has an obligation to train employees within the plant who are interested in bidding on the job and who would otherwise qualify.

The Union does not identify anything in the Agreement itself which requires the Company to provide switching training for employees wishing to enter the sequence. The Company introduced Inland Award 668, in which former Permanent Arbitrator Luskin found that the Company was not required to train employees who wanted to bid into the Truck Driver sequence. The Union made

some attempt to distinguish that case, though its basic conclusion seems sound. As in that case, the Union in the instant case does not point to anything in the Agreement which requires the Company to train bidders for the sequence. Thus, if the Company has an obligation to train in this case, it must be found elsewhere, which is why the Union introduced the grievance settlement and the mutual agreements.

The principal document pointed to by the Union is Rule 24, which deals with "Training and Approval of Student Switchmen." This rule, approved by the parties on April 6, 1962, says student switchmen would be trained for ten days with three different conductors, each of whom must signify approval of the student's work. Subsequently, in 1964, the Union filed grievance Gr. 24-HA-16, Union protesting the Company's action in filling Switching sequence vacancies by hiring new employees instead of giving applicants an opportunity for the jobs. This was the grievance in which the Company noted that it had "long been the established practice ... to hire experienced switchmen." However, the Company also said that it has "afforded departmental employees ... the opportunity to [enter the sequence] through the avenue of the Student Switchman program whereby employees are exposed to a training period."

In that grievance, the Company said the issue was whether it was limited to filling switchmen vacancies solely from the applicant list. The parties settled the grievance in the fourth step in 1966. The Company agreed to test applicants for vacant

switchmen positions and to consider the actual job experience and training. This settlement does not say that the Company would not hire from the outside, but the agreement to test applicants presumably meant they would receive consideration for any vacant positions.

In 1969, the parties concluded a Mutual Agreement whose principal purpose was not explained at the hearing. It makes references to a "1040 hour in-training period" which was not mentioned at the hearing. The Mutual Agreement says that persons completing this program will be considered "experienced switchmen." A later paragraph says:

> It is understood that ordinarily, Switchmen developed in the above manner will satisfy the Company requirements, but that conditions may require the employment of additional experienced Switchmen previously trained elsewhere.

I have some confusion about the relevance of this document. There was testimony from Union witnesses that they had gone through a training program, but I understood that to mean the one described in Rule 24. The relationship, if any, between the 1969 Mutual Agreement and Rule 24 was not explained. There was also a reference to a training program established in 1990, but that was obviously not the one in the Mutual Agreement. There was also evidence that no one was ever trained under the 1990 program.

The Union also points to a 1982 Mutual Agreement which, among other things, created a method for locomotive engineers, whose job was disappearing, to qualify as a switchman or a conductor. The Union argues that the language the parties used indicates that they did not intend to do away with previous

agreements and settlements concerning training. Thus, the language of paragraph 7 of that agreement says that if the locomotive engineer is the prevailing bidder, he must "then be able to meet the qualifications to perform the duties of the Switchman or Conductor jobs in accordance with the existing practices and agreements then in effect in the Transportation Department." (Emphasis added). The Union says the underscored language makes it clear that Rule 24 and the settlement of Grievance 24-HA-16 were to continue in effect. This means, the Union argues, that the locomotive engineer did not have to be presently qualified as a switchman and that they were entitled to training.

This Mutual Agreement was amended in 1989. The principal change appears to have been a revision in the order of progression for the Train Operator sequence. The new progression showed a train operator, a learner train operator, a conductor, a new job of conductor II, and a learner switchman. The Union says the conductor II job was simply a renamed learner switchman. It may be that persons familiar with such newly created sequential progressions would understand the progression in that way, but both jobs are listed in the sequential diagram attached as Appendix A to the Mutual Agreement. There are no identifying numbers for conductor II and the Union says this means the learner switchman numbers would apply. But it is not clear to me that the Company would have yet created any identifying numbers for a job created in a just-concluded mutual agreement. In

addition, the Company denied that the conductor II job was intended to replace the learner switchman. In any event, the Union says that retention of learner switchman (either expressly or as conductor II) means that the parties intended to retain their previous agreements concerning entrance into the Switching sequence. And, the Union says, the Train Operator Sequence is still the Switching sequence. The job posting, in fact, identified the sequence as "Switching (Train Operator)."

The Company points to the fact that in the May 2000 promotional sequence diagram there are just two jobs in the Train Operator sequence: train operator and conductor. The conductor is the lower job, even though testimony established that it is the more responsible position. Incumbents in the position have to be able to perform both jobs. The switching duties are now done by the conductor, who also is in change of the movement of the train. In these circumstances, the Company says, it makes sense to require bidders for the sequence to have switching experience.

The Company also argues that the agreements relied on by the Union have no effect in this case. The Company points out that switchman, leaner switchman, and conductor II have all been eliminated. The grievance settlement and the mutual agreements applied to switchmen, but there are no more switchmen or learner switchmen. The record does not reveal exactly when conductor II and learner switchman were eliminated. The May 2000 diagram introduced into evidence obviously follows the grievance. However, the Union did not argue in this case that the change was

not made until after the grievance. Rather, the Union's argument is that the change has no effect on the agreements on which it relies.

Although the Company points to the elimination of the switching jobs and the absorption of those duties by the conductor, the Union says the elimination of switchman and learner switchman was simply "housekeeping" by the Company. The Union agrees that Article 9, Section 6, permits the Company to eliminate jobs that have not been filled for a year. But the Union points out that this article has to do with the Description and Classification of New or Changed Jobs and it cites industry cases indicating that job descriptions are used principally as a way of classifying jobs and do not guarantee that duties will only be performed by a certain job or that duties cannot be added to a job. The Union says that even if the Agreement allows the Company to eliminate jobs under certain circumstances, that does not mean that the Company can ignore historic understandings about how employees enter the sequence. At base, that is the Union's argument. It says the Company's obligation to offer switching training to those entering the sequence is not limited by the jobs that may exist in the sequence from time to time. Rather, it sees the agreements as requiring the Company to provide training as long as that work is still performed by the remaining jobs in the sequence.

Findings and Discussion

Although the Company introduced job descriptions into evidence, it did not argue in arbitration that those documents themselves had any relevance to its right to forego switching training and require experienced bidders for the Train Operator sequence. Rather, the Company's argument is that the change in the sequence over the years justified its decision. These changes include the elimination of the switchman job - apparently by agreement - and the Company's unilateral elimination of learner switchman and conductor II. This means, the Company says, that switching duties are now performed by the conductor, who also has other important duties.

Presumably, the Union's argument about job descriptions is simply intended to mean that actions taken pursuant to Article 9, Section 6 have no effect on the substantive rights otherwise created by agreement. This may overstate the fact. Over the past ten to twelve years, both parties to this relationship have relied on job descriptions in arbitration for purposes other than demonstrating an effect on wage classification. In fact, I have previously expressed confusion about how the parties intend the job descriptions to be used. I cannot resolve that broader issue on this record. But neither can I ignore the fact that the leaner switchman and learner jobs are now gone. However that may have occurred, this is now a two job sequence, with the conductor now performing the switching duties. The question is whether the

historic agreements remain when the Company seeks to fill the position that now performs those duties.

I agree with the Union's contention that change, of itself, does not nullify previous agreements, even - perhaps particularly - those of long-standing. But that does not mean that agreements always continue to bind the parties without reference to subsequent developments. I find that the most significant factor in this case was the elimination of the switchman as a stand-alone job. This was not accomplished through some unilateral action but, rather, was apparently the result of agreement. I cannot conclude that when the job itself disappeared, the parties intended to retain the training requirement that went with it, even though the duties were added to another position.

I realize, as the Union points out, that the 1982 Mutual Agreement suggests that the previous training requirements were retained for locomotive engineers who wanted to be switchmen. But, of course, the switchman job still existed at the time. This agreement, then, is of limited usefulness is assessing what requirements existed after the job was eliminated. Moreover, I cannot infer much from the fact that the parties seemingly intentionally retained the training requirement. It was to apply to locomotive engineers who wanted to be switchmen. But their job was disappearing and it makes sense to think that the parties agreed to give them the training necessary to claim another job in the department. That does not mean that they also intended to keep the training for new employees entering the sequence,

especially if circumstances changed so that, in later years, the entry level job was no longer switchman.

The 1989 Mutual Agreement is also not helpful. It does not list switchman on the agreed-to sequential diagram. There is a conductor II, but as noted in the Background section, I cannot say that this was a replacement for switchman or learner switchman. The Mutual Agreement gives no hint of its purpose and there is no practice to look to, since the job was never filled. The diagram also lists learner switchman, though the Union says the intent was to use conductor II for that purpose. In any event, both of those jobs are now gone. Moreover, not only the sequential diagram but also the pattern of work in the department varies significantly from that which existed when Rule 24 was adopted in 1962 and Grievance 24-HA-16 was settled in 1966.

In 1962, switchman was the entry level job, and it obviously made sense to think the Company should provide basic railroad training to employees entering the sequence. But by 2000, things had changed dramatically, so that switching was only one of the duties of the conductor. The concept of entry level training for a sequence loses its force when the entry level position has a myriad of duties and responsibilities that makes it the most responsible job in the sequence. There has, then, been a significant change in circumstances since the 1960's, when the parties agreed to the principal agreements relied on by the Union. These include the remote control operation of the trains, the elimination of the switchman job, and the absorption of those

duties by the conductor. Given these changes, I am unable to conclude that the parties intended the agreements to apply to conductors, for whom switching duties were not a principal responsibility, but merely one of several obligations. In these circumstances, the Company could require bidders have switching experience rather than re-instituting its long-dormant program. Thus, I must deny the grievance.[1]

The Union also introduced the Sequence Support Mutual Agreement from 1995. In response to my question at the beginning of the hearing, the parties agreed that sequence support is not actually part of the sequence. However, the Union pointed to paragraph 1 of the agreement, which says that entry requirements for the sequence support occupation are the same as those for the entry level position in each sequence. The Union says this means that the conductor II occupation was replaced by sequence support. From this, the Union infers that there was an intent to retain a training requirement. The Company disagreed, denying any agreement to replace conductor II with sequence support and noting that the entry level position for the sequence is

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[1] Although the employees in the sequence pick monthly and can choose either job -- train operator or conductor -- there was evidence that the Company has sometimes held jobs open for employees who are not qualified for both positions. Thus, a train operator who had no switching training could claim a train operator position, even if not entitled to it by seniority. Presumably, the Union introduced this evidence to counter the Company's claim that all employees entering the sequence need switching experience. Even though the Company may have done this in the past, it is not unreasonable for the Company to require switching experience for new employees in the sequence. Incumbents can pick both positions and, with fifteen new entrants, it could become difficult to "save" positions, especially if most of the new employees do not have switching experience.

conductor. Both of these contentions were advanced in argument. On the basis of the evidence, I cannot make any findings about the purpose of sequence support and its relationship to conductor II. But, as I have already noted, I also cannot say that conductor II was intended as a training position in any event.

AWARD

The grievance is denied.

Terry A. Bethel
January 30, 2002