

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 992

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated the seniority rights of employees in the train operator sequence when it assigned the work of indexing locomotives at the North Rail Dump to employees in another sequence. The case was tried in the Company's offices in East Chicago, Indiana on December 10, 2001. Pat Parker represented the Company and Dennis Shattuck 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
W. Carter.....Manager - No. 7 Blast Furnace
N. Sucevic.....Integrative Planner, Rail Operations
W. Calhoun.....Section Mgr., Rail Operations
T. Kinach.....Section Mgr., Union Relations

For the Union:

D. Shattuck....Advocate
M. Mezo.....International Representative
D. Reed.....Secretary, Grievance Committee
D. Jones.....Witness
R. Campos.....Griever, Transportation Dept.
J. Kerr.....Ass't. Griever, Area 20
K. Boring.....Witness

Background

Wendell Carter, Manager of No. 7 Blast Furnace, testified that until sometime in 1992, his area received coke from no. 11 coke battery within the Harbor Works by conveyor, as well as some by rail or trucks. Coal was delivered to 11 battery by rail and was dumped at the south dump where employees from the 11 battery dumped the cars. No. 11 coke battery shut down in 1992 and from then until the opening of a new Inland facility, the Company purchased coke, most of which was delivered to the north dump. In addition, the Company received some sinter ore at the north dump. The parties agree that train operators from the switching sequence operated the locomotive at the north dump. The north rail dump and the south rail dump are about 200 yards apart.

In order to reduce its need to purchase coke, the Company built a pulverized coal injection (PCI) facility, which was fully functional by June, 1994. This resulted in fewer coke cars being delivered to the north dump. The Company says the workload went from about 108 cars per day to about 82 cars per day. Initially, coal for the PCI was delivered to the 4AC Station, a coal fired generating station. When 4AC was shutdown, the utilities sequence employees who had worked there began working at the

south dump. This included operating the locomotive for purposes of spotting the cars. This was the same kind of work that train operators were doing at the north dump, 200 yards away, although the PCI employees also emptied the cars at south dump. In 1998, the Company's new coke facility began operation. This drastically reduced the delivery of coke by rail car to the north dump, since most of it was then delivered to the blast furnace by conveyor. The final change the Company points to here is the decreased usage of sinter blend, which began in about April 1998. Because sinter had been delivered to the north dump, this, too, reduced activity at that location. The Company says that by February, 2000, only 17 cars per day were being unloaded at the north dump. This is what led to the changes at issue in this case.

Prior to the change complained of in this case, Rail Operations provided a locomotive at both the north and south rail dumps. In addition, it provided a train operator to operate the locomotive at the north rail dump, but not at the south dump. As noted above, the south dump locomotive was operated by employees from the PCI sequence. Following the change, there was only one locomotive serving both dumps and no train operators were assigned to run it. There is a dispute about exactly who operates it. The parties agree that PCI seniority sequence employees operate the locomotive at the south dump. The Company says that at the north dump, the locomotive is operated only by employees from the raw material sequence at no. 7 blast furnace.

The Union agrees that these employees operate the locomotive on back turns, but it says PCI sequential employees operate it at the north dump on day turn. The extent of this disagreement did not become apparent until final argument, after all of the evidence had been submitted. The Company says the changes saved it about \$75,000 per month.

The Company says it was appropriate for it to eliminate a locomotive because of the significant decrease in the workload at the north dump. It also notes that the work being performed by PCI employees at the south dump is virtually identical to the remaining work at the north dump. Thus, the Company says it was appropriate for it to reassign the remaining north dump duties. The Company argues that any one of three theories would justify its action. First, the Company denies that employees from the train operator sequence have the exclusive right to spot cars at the north dump. It notes that employees from two other sequences do the work of operating locomotives within the plant, including employees from no. 7 blast furnace and employees from PCI. This is sufficient, the Company says, to defeat any claim of exclusivity. It was, therefore, within the Company's right to assign the work elsewhere.

In the alternative, the Company says that even if the train operator sequence had rights to the work, the work has diminished to such an extent that it virtually no longer exists. In that event, the remaining residual duties can be assigned across sequential lines. In support of that argument, Carter identified

two exhibits. Company Exhibit 1 shows the fall-off in car unloading for coke and sinter cars, particularly in June of 1998, with another significant decrease in mid-2000, which was about the time of the change at issue here. Company Exhibit 2 contains data concerning the percentage of engine utilization, the number of cars dumped, and the time spent in spotting at the north dump. In March, 2000, according to the Company's figures, train operators at the north dump were working about 41 minutes per turn. Carter said the amount of work available there was even lower by the time of the hearing.

This evidence led to one of the principal factual disputes at the hearing. Most of the 41 minutes involved moving cars into position, data which was taken from the Company's GPS system. In addition, the Company calculated that it took about 40 seconds or so to spot the cars into position to be dumped, though it allowed a minute for that activity. It excluded the time spent dumping. The Company says it takes about six minutes to dump a carload of coke and a little less for sinter, although the Company said it dumped two sinter cars in this time period. In computing the amount of time spent working by the train operator, the Company did not include the time it took the car to empty. The train operator is not involved in that process and, the Company argues, that is idle time which the operator can use as he wants, obviously within workplace parameters. The Company notes that train operators are not actually on the train and that they are not monitoring the process. Instead, most of them work out of a

shanty, and they either remain inside or go out onto the porch to move the train by remote control.

The Union argues that it makes no sense to exclude the waiting time, which it says is an essential part of the process, even if the train operators are not actively involved in it. Realistically, they could not leave the area, since they have to remain available to move the car when it is empty. The Union also contests the Company's claim about the time it takes to empty cars. Union witnesses said it takes longer than six minutes, and depends on certain conditions, including the weather. One witness said it takes about 7 to 10 minutes to empty a car in good conditions, but that it has sometimes taken as long as 20 minutes. The Union also presented evidence that while two sinter cars are spotted at one time, they are emptied sequentially. However, Carter said his estimate of 5 minutes included both cars.

The Union also pointed out that Carter acknowledged that the car emptying time in his exhibit was only an estimate - the Company did not do a time study. Carter said the figures were based on his observations while he was a section manager, as well as by timing the interval between horns. The Union argues, however, that there is no reason to credit Carter's testimony over that of the employees who actually work in the area. The Union used some of the Company's data and data from other Company reports to estimate that train operators had worked about 2.2

hours per turn, including engine movements, indexing and the time spent emptying the cars. However, this excluded other duties.

There was also disagreement between the parties about whether the Company's other data captures all the time employees spend. Carter acknowledged that there could be some movements that are not picked up by the GPS system. In final argument, the Company asserted that the GPS records every movement of three feet or more. This may be true, but there was no testimony to that fact in the hearing. In addition, there was disagreement about whether the train operators who had been assigned to the north dump performed any other work. Although Carter said the train operators had no other duties, Union witnesses said there were, including movement of cars to get at particular kinds of coke.

Despite its claim that there was more than merely residual duties remaining for the train operators assigned to the north dump, the Union says it is not even necessary to consider that argument. The north dump assignment was not, the Union says, an "occupation," as that term is generally understood by the parties. Rather, it says the result of Inland Award 813 was to recognize that the switching sequence (now the train operator sequence) had the exclusive right to operate locomotives throughout the plant. It is inappropriate, the Union says, to look at any one location and assess only the amount of train operation work available there. If that were the case, the Union says, then the Company might eliminate train operators at

numerous locations around the plant. But the train operators have the right to the work across the plant and not just at particular locations. Moreover, the Union argues that even if one were to look only at work in the area of the north dump, it is not fair to isolate duties connected to moving the cars for dumping. There is other work in the area also and all of the work must be considered together. The Company's response was that even though train operators might have a plant wide seniority unit, the ones at issue here virtually never left the area of the north dump and they were only rarely called upon to do any other work, including work in the area in proximity to the north dump.

The only exception to the train operators' plant wide jurisdiction to operate locomotives, the Union says, was in 11 battery. The Company pointed to the operation of locomotives by those employees in its attempt to assign employees from the 80" to operate locomotives in 1989, a move that became the subject of Inland Award 813. In that case, Arbitrator McDermott held that the parties had administered the Agreement so as to indicate that the switching sequence was the "proper repository of switching duties in this plant" and that the 11 battery exception was not sufficient to "destroy the claim of the switching sequence to this work." By the time this case arose, however, the Company points out that there was more than merely the 11 battery exception - there were also employees operating a locomotive at

the south dump. This, the Company argues, is sufficient to destroy any claim of exclusivity by the switching sequence.

Former Local Union President Mike Mezo testified at length about the circumstances at the south dump. The engine that was operated by 11 battery employees and was the subject of the Company's argument in Inland Award 813, Mezo said, ended up at the south dump after 11 battery closed. Employees from both 11 battery and no. 7 BOF claimed the work of operating the engine. Ultimately, Mezo said, the parties agreed to assign the work to the 11 battery employees, although they were put into the a no. 7 blast furnace seniority unit. Mezo said this meant that the 11 battery exception to the exclusive operation of engines by the switching sequence - which Arbitrator McDermott found insufficient to destroy exclusivity - continued to exist after 11 battery was closed, even though the kind of material being hauled was different.

Mezo said the PCI started up in 1993, though it was initially not manned by the Company. Ultimately, the Company agreed to man it and wanted to put the employees in the no. 4AC utilities unit. During discussions, the Company said it was not certain that it could fully utilize the employees by having them bring coal into the PCI and that it wanted to give them a locomotive and have the responsibility for transporting and unloading coal at the south dump, as well as other duties. Mezo said he was concerned about this proposal because in Inland Award 813, the Union had maintained switching sequence exclusivity for

that kind of work and this new exception could weaken the Union's argument in future cases. Mezo said he agreed with the Company's proposal on the condition that doing so would not undermine the Union's claim of exclusivity for the switching sequence. The Company points out, however, that the parties signed a mutual agreement concerning this arrangement and that it says nothing about Mezo's concerns or any assurance of continued exclusivity.

The Company's final argument is that the elimination of the locomotive from the north dump is a change sufficient to justify the abrogation of seniority rights. The Company points out that the equipment cost it \$75,000 per month and was redundant. Thus, it had the right to decide that the locomotive would be eliminated. When that happened, the work of operating the locomotive went with it and the question became who would operate the remaining locomotive serving both locations.

Findings and Discussion

I am unable to find that the operation of a locomotive by PCI employees at the south dump was sufficient to undermine the exclusivity of train operators. As generally understood, and as explained in more detail in Award 813, Section 13.3 and Section 2.2 protect the seniority rights of employees by restricting the Company from the assignment of work across sequential lines where the employees in a given sequence have done the work to the exclusion of all others. Only "reasonable" exclusivity is required, meaning that a mere showing of limited exceptions is

generally understood not to be sufficient to undermine the rights of a particular sequence to certain work. In Inland Award 813, Arbitrator McDermott said that train operators in the switching sequence (now the train operator sequence) had the right to operate locomotives across the plant, even though 11 battery employees had also done that work.

I believed Mezo's testimony about his concern over the Company's proposal to allow PCI employees to operate locomotives at the south dump. Award 813 was issued only about five and a half years before this controversy arose. Moreover, as these parties know, it had frequently been cited in similar jurisdictional cases (not involving train operators) in the early and mid-90's. Mezo, then, would have had little reason to forget the award and would have been conscious that additional exceptions could undermine what was won in that decision. The Company did not call any witness to rebut Mezo's testimony. It is true that the mutual agreement does not mention any assurances, but the agreement contains few provisions and is devoted largely to identification of the sequence. In any event, I thought Mezo's testimony was credible and I conclude that the addition of a PCI train operator does not undermine the jurisdictional rights of the train operator sequence.

Nor am I able to find that the elimination of the locomotive at the north dump had any effect on jurisdictional rights. Presumably, this argument rests on the fact that arbitrators have understood the Section 13.3 jurisdictional rights to be

understood the Section 13.3 jurisdictional rights to be "assisted" by the local working condition principles of Section 2.2. The Agreement provides that a change in the conditions leading to the existence of a local working condition may allow the Company to eliminate the condition. But that principle is inapt in this case. There is no claim by the Union that the jurisdictional rights of train operators depended on the existence of a particular piece of equipment. Rather, its claim is that if such work is to be performed at the north dump, the train operator sequence has a right to it. The work is still performed, even though the Company has decided to remove a locomotive from the area and assign it elsewhere. There was, then, no relevant change for purposes of Section 2.2.

These findings mean that the case depends on the Company's argument that the work at issue has been reduced to the point than only residual duties remain, thus allowing the Company to assign the work across seniority unit lines. The Union argues, however, that it is unfair to isolate the work at the north dump, since the train operators have jurisdictional rights all over the plant. It points out that if locations were isolated, the sequence could easily be undermined, referring to the oft invoked argument that the time to stop erosion is when it begins.

I find this argument to have merit. This record does not support much generalization, though it is no doubt true that there are train operators who do small bits of work in various areas throughout the facility, any one of which would be only

"residual" under the standard the Company applies in this case. The assignment of that work to another sequence because of its short duration could easily undermine the train operator sequence. But as I understand it - and, again, the record makes it difficult to generalize - the Company's argument in this case is that the north dump is different. Other train operators may perform only minimal work in particular areas in a given period, but they serve other areas as well.

The Company's evidence suggests - though it witnesses did not actually state - that the train operators were assigned to the north dump on a full-time basis. Moreover, the Company argues - though Union witnesses disagreed - that the train operators at issue did not do other work in the area. If this is true, then presumably it is because the train operators had to be available in case a car needed to be spotted. However, this would be undermined somewhat by the current arrangement. That is, the PCI employees who operate the locomotive at the south dump and who now travel with their locomotive to spot cars at the north dump are obviously not sitting in the north dump shanty waiting to be called. Nevertheless, if the argument about residual duties applies to this situation, it might be of some importance if the evidence were sufficient to support a finding that train operators had to remain at the north dump continuously and could never be available to work in any other location, regardless of the number of cars to be spotted. But if that were the case, it would only be because the parties have already

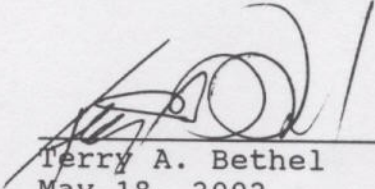
recognized an exception to the train operator's exclusivity in almost the same area with employees from another sequence performing almost the same work, namely the PCI employees who operate a locomotive at the south dump. In that event, a finding that the remaining work was residual and could be transferred to the PCI sequence would have no impact on the exclusivity of the train operator sequence.

But there is insufficient evidence to allow a finding in this case that the train operators typically assigned to the north dump could not be assigned to additional duties within their sequence. It may be that when the operation was at its peak, train operators had to be present on a continuous basis. But Company witnesses did not say that was true now that there are fewer than 17 cars spotted per turn, especially when the employees who now spot them are not there continuously. Seniority rules are sometimes strict and the rules at issue here may be more limiting than they would be in some other basic steel relationships. However, given the seniority rules at issue in this case, the Company cannot take work away from a plant-wide sequence and assign it elsewhere for the sake of convenience or even for the sake of efficiency. I understand that the Company has serious economic issues, but the parties have not authorized me to ignore established rules in such circumstances. Nor, I assume, do they want arbitrators making economic decisions for them.

I find that in the circumstances at issue here, the Company cannot assign the exclusive duties of the train operator to another occupation at the north dump. I do not mean to say that the Company has to continue to schedule a train operator at the north dump for an entire turn. The Company is free to assign other work to the train operators, a fact that may be of some importance in view of testimony that there was other train operator work in the vicinity of the north dump and in view of the diminishing demands on the operators typically assigned to the dump.

AWARD

The grievance is sustained. The Company is ordered to return the work at issue at the north dump to employees in the train operator sequence.



Terry A. Bethel
May 18, 2002