

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 997

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns a dispute over the interpretation of vacation bonus language added to the Agreement in the 1999 negotiations. The case was tried in the Company's offices in East Chicago, Indiana on April 15, 2002. Pat Parker represented the Company and Dennis Shattuck presented the case for the Union. The parties submitted the case on final argument pursuant to a stipulation. There was no testimony at the hearing.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy
R. Cayia.....Manager, Union Relations
T. Kinach.....Section Mgr., Union Relations

For the Union:

D. Shattuck....Chairman, Grievance Committee
B. Carey.....International Representative
D. Reed.....Secretary, Grievance Committee
F. Crowley.....Chairman, Grievance Comm., Local 6787

Background

The stipulation leading to this arbitration reads as follows:

In the 1999 negotiations between the USWA and various integrated steel producers, the following language became the pattern for the industry:

Effective August 1, 2001, a vacation bonus of two hundred fifty dollars (\$250) per week will be paid to employees for each week of vacation taken in the ten (10) consecutive week period beginning with the first full week following the week containing New Year's Day.

The issue before you, of entitlement to the vacation bonus, is similarly an issue and has similarly been contested by the Union at the other Steel Companies.

The problem concerns employees who are paid for vacation even though they were not otherwise scheduled to work. Under the terms of the Agreement, employees on layoff, on sick leave, on Union leave, and employees who are absent for various other reasons are entitled to vacation pay in accordance with the eligibility provisions of the Agreement. In the Company's view, an employee who is absent on such a leave during the period of his vacation is not eligible for the vacation bonus even though it is scheduled in the targeted weeks.

The Company focuses on the words "vacation" and "taken." An employee, it reasons, cannot take a vacation when he would not be at work anyway. To take a vacation means to leave or to absent oneself. The dictionary defines it as a period of respite, so that in the Agreement the parties obviously intended it to mean a period of relief from work. An employee who is not working might

receive pay for a benefit earned, but he is not on vacation in the sense the parties intended in the language quoted above. Instead, the employee receives pay in lieu of actually taking a vacation.

The Company also points out that employees who are on sick leave or layoff or Union leave can change their vacation to any week. It makes no sense, the Company says, to allow employees to change a vacation to the targeted week simply to receive the bonus. It was not intended to be a "windfall." Rather, the Company focuses on the Union's intent in proposing the language, which it says was to open up desirable vacation periods by giving senior employees a bonus for scheduling part of their vacation in undesirable months.

The Union argues that the vacation bonus is not a windfall, but, rather, is a negotiated benefit. It says that taking a vacation should be given its ordinary meaning, which means that it is "taken" when it is scheduled and an employee gets paid for it. The Union says it recognizes that scheduling the vacation is not enough and that some employees might schedule a vacation, but not "take" it. Thus, the Union says it might be reasonable to say that an employee who "sells" vacation and is merely paid in lieu of vacation has not taken a vacation. Moreover, it could be reasonable to conclude that employees who retire or die or otherwise terminate their employment before the scheduled vacation do not take a vacation, even though they receive vacation pay.

The Union also says - contrary to the Company's argument - that when an employee schedules a vacation and later goes on sick leave, he cannot move the vacation. Thus, if the vacation falls in the targeted period, the employee should receive the bonus, whether he is actively at work or not. As to employees on union leave, the Union says the Company's fear is that they will schedule a vacation in the targeted period, but then actually take time off at some other time. But, the Union says, these employees can ask to be scheduled in the plant at any time. The Union also pointed to provisions of the Agreement in which the parties had expressly restricted benefits to active employees, which was not the case here.

Findings and Discussion

There is certainly language in the Agreement that supports the Company's argument. For example, m.p. 12.15 refers to employees who will "take vacation time off," obviously contemplating that they will absent themselves from work. Moreover, mp. 12.19 and m.p. 12.20, which refer to employees who schedule vacation while they are on layoff or disability or leave of absence, do not mention "taking" a vacation. But there is also some sense to the Union's position. In the first place, it is probably fair to observe that the concept of "taking a vacation" has become common parlance and might be used to describe a period for which an employee receives vacation pay as well as a period of actual relief from work. This kind of usage

actually appears in the Agreement, as the Union points out. For example, m.p. 12.20.33 says that under certain conditions, an employee can "take" a vacation during shutdown period, even if he had not originally been scheduled then. Obviously, this is not a situation when an employee takes a leave from active work.

The language the parties used in 12.14.3, then, does not necessarily indicate the circumstances under which the bonus is payable. But the language is given meaning when one considers what the parties were trying to accomplish. One of the Union's bargaining priorities was to open vacation opportunities in prime periods and one way to do that was to restore the vacation bonus "keyed to vacations in undesirable months." At least part of the intent, then, was to provide an incentive for employees to schedule vacations in undesirable periods, thus opening weeks in prime periods for younger employees. Because there is no factual record and no precise case at issue here, it is difficult to anticipate all the permutations that might face the parties. But I can address the kinds of examples offered during the parties' arguments.

At the hearing, I asked what would happen if an employee who was actively working and expected to continue working, scheduled his vacation in February. Subsequently, the employee was injured and went on sick leave for a period that included the previously scheduled vacation. The Company responded that this employee would not receive the bonus because he was not actively at work

during his vacation period and, therefore, did not "take" a vacation. I disagree with this conclusion.

There is some inconsistency in the Company's position. It cites the Union's bargaining objective to restore the vacation bonus as a way of opening up desirable vacation weeks for junior employees and then says that the touchstone should be whether the employee is actually at work at the time the vacation occurs. An employee, the Company argues, cannot "take" a vacation unless there is something to vacate from. But the fact that an employee might be off or ill, and therefore not at work when his vacation was scheduled to start, seemingly has little to do with whether he satisfied the objective the parties sought to serve. Under the question posed above, for example, the employee who scheduled a week in February when he might have taken a week in July would have opened up that summer week for someone else. The fact that the employee subsequently got sick or was laid off and then was inactive when the scheduled vacation occurred would not appear to change that result. If the employee takes (or is paid for) the vacation in February, as the Union says the Company typically insists, then the principle of the vacation bonus has been satisfied. In these circumstances, I find that the Company must pay the bonus.

However, if an employee had a vacation scheduled in some other period and then was laid off in February, he could not receive the vacation bonus simply by electing to use vacation to

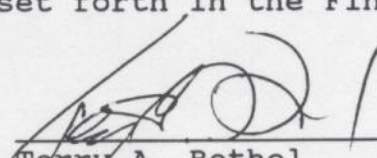
cover part of the layoff, assuming it were possible to do so.¹ Under this scenario, the employee would not have opened up a desirable period by choosing a winter vacation during the selection process. The same thing is true for an employee on a long term absence who, it can reasonably be expected, will not be at work during the desirable summer months, including employees on union leave. An employee should not be able to schedule a vacation for the winter simply to qualify for the bonus when there is no realistic expectation that he will be at work in the desirable months. In that event, the Company would have made plans to cover the work without him during the summer, so that the period of his vacation selection would not affect the options available to other employees.

These two general scenarios would seem to cover the examples offered at the hearing. The touchstone is not, as the Company claims, whether the employee is actively at work at the time the scheduled vacation occurs. Rather, the question is whether the vacation scheduling served the interest advanced by the parties when they agreed to m.p. 12.14.3. An employee who elects a vacation period in the targeted period and thereby opens a desirable period for other employees is entitled to the bonus.

¹ There was some disagreement in the arguments about whether vacations could be moved once they were scheduled, if employees were subsequently affected by layoff or other absences. That issue is not before me in this case and nothing I say should be interpreted to express an opinion about it.

AWARD

The grievance is resolved as set forth in the Findings.



Terry A. Bethel
August 27, 2002

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