

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 998

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company is improperly administering the Steady Day Turn Agreement for employees in the Process Automation Department. The case was tried in the Company's offices in East Chicago, Indiana on April 16, 2002. 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
J. Payonk.....Area Manager, Process Automation
G. DeArmond....Contract Admin. Resource, Union Rel.
J. Mack.....Team Resource, Process Automation
P. Boulac.....Union Relations Intern

For the Union:

B. Carey.....International Representative
D. Shattuck....Chairman, Grievance Committee
A. Munro.....Grievant
J. Leighty.....Retired
S. Vuckovich...Griever, Process Automation

Background

The parties' 1977 Local Settlement Agreement included a provision entitled "Steady Day Pick System Trade, Craft and Maintenance Systems." That agreement provides, in part:

Subject to the limitations for implementing this provision set forth below, in sequences where the company has established a steady day turn trade, craft or maintenance force, qualified employees in the sequences shall have the right to claim such steady day turn assignments by filing a request in writing with the department superintendent.

The assignments are to be made on the basis of seniority.

Appended to the copy of this agreement introduced into evidence as Joint Exhibit 2 were two sheets of paper. One is undated and is headed "Steady Day Pick System." It appears to be part of the original agreement. The first paragraph recites that "In sequences where the Company has established a steady day turn trade, craft or maintenance force," employees may apply for them twice a year. The document also says:

The number of steady day turn assignments, the duration of such assignments, and the jobs to which the employees are assigned shall continue to be determined solely by the Company.

The third sheet of paper in Joint Exhibit 2 is a 1989 letter that deals with temporary steady day assignments. Although originally an issue in this case, the Union withdrew its claim concerning temporary assignments at the beginning of the hearing.

The parties agree that at the time the grievance arose, the Company had designated sixty-four steady day turn assignments in the Instrument and Control Technician (IC Tech) classification in the process Automation Department. There were about 127

employees in the IC Tech sequence at the time, only eight of whom were not fully qualified. In addition, nineteen employees had waived any right to work on a steady day assignment. Grievant Munro is one of the employees who has a steady day assignment. His grievance protests the fact that he has not worked steady days but, instead, has sometimes been required to work on off-turns. Grievant is one of four employees regularly assigned to work at No. 2 Blast Furnace.

There is no dispute that employees in Process Automation do not have the right to choose job assignments, although they can apply for available steady day assignments. The Company says there is little interchange between assignments because of the knowledge necessary to work in certain areas. Area Manager Payonk said that his employees are often assigned on the basis of niche, ability and background skills. Once an employee goes into a particular assignment he gains knowledge of that area, its equipment and instrumentation. Although there was some contradictory testimony from a Union witness, Payonk said the process and equipment can differ from department to department and the Company wants to keep employees in assignments where they have developed technical knowledge of an area.

The problem in this case is that IC Techs in Grievant's area are occasionally required to work an off-turn, either for a start up or to assist on some other task. In such cases, one or more of the four employees assigned to that area are assigned to the off turn. Grievant's complaint is that he is supposed to have a

steady day assignment, which should preclude being scheduled on off-turns. In addition, he points out that on occasions when he has had to work an off-turn, IC Techs with less seniority have worked day turn. In fact, there are technicians with less seniority who never - or almost never - work an off-turn. The Company says this is because these employees are assigned to support departments where no technicians are needed on off-turns. Grievant, however, works in a department where there sometimes are such needs.

The Company's position is that even though Grievant sometimes is required to work off-turns, he is still assigned to a steady day turn. The Company points out that it did not decide to implement a steady day turn schedule until 1995. The initial posting defined a steady day turn as one in which an employee is "Scheduled mostly for day turn work with some limited off turn work...." Subsequent postings had this same definition until 1999, when the definition said a steady day turn was one which was "Scheduled mainly for day turn work." There are no 2000 postings in evidence. Postings for 2001 do not include the definition of steady day turn work as requiring that an employee be subject to off-turns.

The Company says that nothing in the Collective Bargaining Agreement or in the Steady Day Turn Agreement precludes scheduling steady day turns on this basis. Moreover, the Company argues that this scheduling is necessary even if it is not used for other kinds of crafts because of the nature of process

automation work. The technicians develop an expertise with particular equipment and processes and cannot easily be interchanged. Moreover, the Company has the right to assign employees to work where it thinks their skills are best utilized. This means that four senior employees who are eligible for steady day work might all end up in one location, as has happened in this case, where Grievant works at No. 2 Blast Furnace with three other senior technicians. The Company needs the flexibility to require the employees to occasionally work off-turns. Otherwise, it would be required to use employees on those turns with little or no experience in the blast furnace. It says that it does not abuse its right to schedule employees on off-turns, pointing out that Grievant works more than 96% of the time on day turn. The Company says if the Union were to prevail in this case, it would have to designate the blast furnaces as shift work in order to insure that skilled technicians would be available to work on off-turns.

The Union says particular jobs are not designated as steady day turn assignments in other departments. Rather, the departments determine how many steady day turn assignments are available - that is, how many employees it can use only on days - and the employees apply for them on the basis of seniority. Those employees are then guaranteed that they will only work on day turns. As a steady day turn employee, the Union argues that Grievant is entitled to the same treatment. The Company cannot justify using him on off-turns because he is assigned to a

particular job that needs such a schedule. If that is the problem, the Union says, then the Company can simply move him to another job where no off-turn work is required. Or, the Union says, the Company can implement the bubble system used in other departments, which was explained by Grievance Committee Chairman Dennis Shattuck.

Shattuck said in other departments, management determines the number of people who will be on steady day assignment based on the number of employees on the shift and the amount of work to be done on day shift. The departments do not do it on the basis of job assignment. The most junior employees on steady day turn assignments are known as the bubble people. If the Company finds that it needs more employees on off-turns in a particular week or, presumably, on a particular day, then the work goes to the bubble employees. But these are the only employees on steady day assignments who are subject to off-turns.

Another alternative for Process Automation, the Union says, is for the Company to assign employees who do not have sufficient seniority to get steady day assignments to the blast furnaces, which is the area where employees are most likely to be required to work on off-turns. If one or two or, conceivably, all of the technicians in that area did not have steady day assignments, then the Company would not have to worry about scheduling them on off-turns. The Company says this is not feasible because it would have to retrain employees on a regular basis. As employees became senior enough to secure steady day assignments, some of

them would have to moved out of the blast furnaces. This steady turnover would compromise the Company's interest in keeping skilled employees in place. In addition, this assignment method would prevent the Company from exercising its right to schedule employees where it thinks their skills are best used.

Findings and Discussion

The Union's case is hurt by the lack of any definition of "steady day turn" in the 1977 agreement or any indication about how the process might be implemented in various departments, aside from the requirement that employees choose steady day assignments on the basis of seniority. The word "steady" is obviously important and it suggests that employees so assigned will regularly work day turns. "Steady" is ordinarily understood to mean persistent or not subject to change. And that seemingly is the way other departments at the mill have understood what the parties meant in the Steady Day Turn Agreement. But it is not necessarily the case that every department would be able to implement the agreement in the same fashion. In this case, for example, I credit the Company's evidence that familiarity with equipment and processes makes it highly desirable to schedule the same employees in the same areas over extended time periods. I believed the testimony of a Union witness that equipment is similar throughout the mill. But it is surely within the Company's discretion to determine that certain employees are more skilled in some areas than others.

The parties obviously knew at the time they negotiated the Steady Day Turn Agreement that not all departments scheduled employees to work in the same manner, yet they provided no guidance about how differing procedures might be accommodated. The Union argues that the agreement must be implemented in the same fashion in each department. But nothing in the Steady Day Turn Agreement suggests that the Company was obligated to modify other scheduling practices in order to provide steady day turn opportunities for employees. And, of course, nothing in that agreement requires the Company to implement steady day turn assignments in any department at all, meaning that the Company has significant discretion about how the employees will be scheduled in Process Automation. Inland Award 675¹ underlines the Company's discretion in deciding whether to avail itself of steady day turn assignments.

In the instant case, the Company decided that it would use steady day turns in Process Automation, although its initial and subsequent postings made it clear that it did not guarantee that employees who accepted such assignments would always work day turn. Employees who accepted those assignments, then, knew that they would occasionally have to work off-turns. I agree with the Union's contention that this is a variation from the manner in

¹ The Union claims that this case supports its position here because the Company acknowledged that employees who were sometimes scheduled for shift work were not on steady day assignments, which is exactly contrary to the argument the Company advances here. But the Company elicited testimony from a Union witness that the schedules at issue in Award 675 actually involved working on off-turns for an entire week, so that there really was shift work involved. In the instant case, employees are required to work occasional off-turns, but typically not for an entire week.

which steady day turn assignments are handled in other departments and, moreover, that it conflicts with the dictionary definition of "steady." But this is not the only example of that. The Union explained, and apparently agrees with, how the bubble men are used in other departments. They are, in effect, placed on steady day turns with the understanding that if off-turns become necessary, they will have to work them. However, this practice is also subject to the argument advanced by the Union in this case, namely that nothing in the Steady Day Turn Agreement provides for a steady day turn employee who will occasionally be required to work off-turns. The bubble man is simply a device the Company uses to accommodate the desire for steady day assignments with the Company's need to schedule sufficient employees to do the required work.

The Union says, however, that this is not objectionable because the employees understood they were bubble men when they accepted the assignment. Of course, that is true in the instant case as well, since employees were advised that steady day turn assignments might require occasional off-turns. More important to the Union's argument, however, is that the off-turn work for bubble men is assigned on the basis of seniority. Thus, when off-turn work is necessary, the bubble system assures that the more junior employees worked it. This is really the gravamen of the Union's complaint in the instant case. In other departments, senior employees who had chosen a steady day turn assignment would not work off-turns while junior employees worked days.

However, that is not true in the instant case. Here, because of the way the work is assigned, a senior employee assigned to work in the blast furnaces will likely work off-turns while junior employees assigned elsewhere work only days.

The Steady Day Turn Agreement does say that such assignments will be made on the basis of seniority. Moreover, it appears that there are some assignments in Process Automation where the employees only work on day turn, despite the Company's admonition that steady day turns might carry the possibility of occasional off-turn work. Although it might involve retraining of both Grievant and his replacement, and, perhaps, other administrative difficulties, it would obviously be possible for the Company to accommodate Grievant's seniority by assigning him to one of those jobs and denying them to junior employees who might also be eligible for steady day turn assignments, at least when there are more than 60 such assignments available.

But, as the Company points out, this would compromise its right to schedule employees where it wants them, which even the Union acknowledges the Company has the right to do in Process Automation. In this case, the Union essentially demands that Grievant not be assigned to jobs where off-turns might be necessary or, if he is, that the Company also assign a junior employee who can work the off-turn. Nothing in the Steady Day Turn Agreement suggests that it was intended to affect the Company's ability to schedule employees as it had done historically. The only workable alternative for the Company was

to announce in 1995 that steady day turns did not really amount to steady day turns and that, because of the scheduling practices of the department, occasional off-turn work might be required. This action made it possible for the Company to maintain its right to schedule and, at the same time, let the maximum number of employees know that they would work mostly day turns.

The Company urges that the Union acquiesced in its interpretation of steady days as including an occasional off-turn by failing to grieve the Process Automation interpretation of the agreement between 1995 and the instant grievance, which was filed in March, 2001, following an oral discussion with Payonk on October 30, 2000. There was some hearsay testimony from Shattuck that a previous griever had discussed the matter with management and that he did not grieve because he thought the matter was settled. The Company, as usual, presented its case first, so it did not ask Payonk about previous grievances and it did not call him in rebuttal, although the testimony was sufficiently vague that rebuttal might have been difficult. But the Union also did not ask Payonk whether there had been discussions or complaints about the Company's interpretation of steady days prior to the instant grievance. Moreover, Shattuck was careful not to overstate the alleged actions of the previous griever or, at least, his knowledge of them.

This is not sufficient evidence to conclude that the Union had raised any significant challenge to the Company's interpretation of the Steady Day Agreement. I cannot say that by

failing to act earlier, the Union necessarily waived its right to grieve. I have recognized in previous cases that a failure to grieve does not always amount to acquiescence. But the Union's inaction over a period of several years - especially when the employees could elect steady days twice a year - does suggest that it understood the Company's interpretation to be a reasonable accommodation of the competing interests of steady day turns and the Company's need in Process Automation to make job assignments free from constraints that might exist elsewhere.

I find, then, that the Company's implementation of the Steady Day Agreement in the Process Automation Department was appropriate. Moreover, I fail to see how a contrary finding would be of any value to the Union. The Company is not required to have steady day assignments and, if elects to implement them in Process Automation, it is certainly not required to have 64 of them. It seems unlikely, then, that Grievant would get a different assignment or that his work schedule would have changed, even if I had found a violation.

AWARD

The grievance is denied.



Terry A. Bethel
July 5, 2002