IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And

Award 1002

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's challenge to the Company's decision to remove Grievant Shawn Kaweicki from the motor inspector apprenticeship program after he failed a test for the second time. The case was tried in the Company's offices in East Chicago, Indiana on August 12, 2002 and September 16, 2002. Pat Parker represented the Company and Dennis Shattuck presented the case for the Union. Grievant was present throughout the case and testified in his own behalf. The Company raised two procedural arbitrability issues, contending that an issue in the case had already been settled and that the grievance, as expanded by the Union, was untimely. The parties submitted the case on final argument.

Appearances

For the Company:

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

J. Simpson.....Training Coordinator, MM&PS
B. Sprague.....Section Manager, Maintenance, 4 BOF
D. Wasson.....Training Specialist, General Physics
W. Boos.....Staff Rep., Personnel Services
C. Lamm.....Senior Representative, Union Relations
T. Liesch.....Electrical Supervisor, MMD
K. Poland.....Senior Planner, 3 Cold Strip
A. Roberts.....Day Supervisor, Electrical, 80" Hot Strip
S. Djankovich.....Student Intern
L. Ezzel.....Student Intern
M. Presler.....Student Intern
R. Fisher.....Student Intern

For the Union:

D. Shattuck.....Grievance Committee Chairman
S. Kaweicki.....Grievant
M. Mezo.....International Representative
S. Wagner.....Witness
L. Aguilar.....Vice-Chairman, Grievance Committee
D. Reed.....Secretary, Grievance Committee
C. Smith.....Assoc. Professor, Purdue, NC
J. Staunch.....Griever
R. Bowman.....Witness
J. Spasoff.....Witness
S. Collette.....Witness
T. Wolotka.....Witness

Background

This case arises out of Grievant's removal from the apprenticeship program after he failed an examination in the unit of instruction known as Power Converters II, or PCII. This was not Grievant's first problem with testing in the program. Grievant was part of the Vocational Motor Inspector (VMI) apprenticeship program, which he had entered on June 19, 2000. The program extends over seven levels, from VMI-7 to VMI-1, with VMI-1 being the highest. The program is governed by a document known as the Craft Administrative Guidelines (CAG) negotiated

between the parties in 1984. There was apparently some period in the 1990's when the Company did not have any apprentices in the VMI program. However, it says it began hiring individuals into the program again in 1999. Grievant entered in 2000 at the VMI-3 level.

In October, 2000, Grievant twice failed a test and could have been removed from the program. However, the Craft Committee recommended that he be allowed to continue, although it suggested that he suspend his outside education and concentrate on the program. In January, 2001, Grievant again failed a test twice. At that time, Grievant furnished information about a learning disability. The Committee recommended that he be allowed to continue with certain accommodations, including additional time for taking tests and additional assistance. Grievant remained in the program until October, 2001, when he twice failed the test covering the PCII module. Grievant was then dropped form the program and demoted to laborer. That is the action at issue in this case. Although there was some evidence at the hearing concerning Grievant's learning disability, that is not an issue in this case and nothing said here should be interpreted as a comment on any grievance that may be pending on that issue.

The Union advances four arguments, which revolve around the job relatedness requirements of the CAG and Appendix F of the Agreement. The principal arguments concern the Union's claim that PCII is not related to the job, as the term is defined in Appendix F, and that Grievant did not receive proper on-the-job training (OJT). Numerous witnesses testified concerning these allegations. A Senior Staff Engineering Technician reviewed the classroom material for PCII and found much of it to be directed at engineers or people involved in design. He said he has some familiarity with the work performed by motor inspectors and that this material is beyond what they are expected to do. He criticized some of the material because it

was concerned with design at the component level rather than at the "black box" level. He said that motor inspectors do not work on components. In fact, the witnesses testified that even he doesn't do the kind of work discussed in the manual on inverters. He said the inverter is a box "that either works or it doesn't." If it doesn't work, craftsmen replace the box rather than working on the components.

Another part of the material deals with cycloconverters. The witness, who has worked in the electrical area for many years, said he wasn't even familiar with this term. He said from what he was able to learn about it, such devices are not used in the mill, which proved to be incorrect according to a later Company witness. Another section dealt with snubbers, which are used in the mill. However, the witness said the material was concentrated on design and theory. He criticized another section for having no "end game," by which he said he meant it did not have any practical applications. He said most of the chapters were design theory taken from design books. The witness also said he had reviewed a hands-on training module prepared by the Company called Flexpak. He said apprentices wouldn't need most of the information from the PCII chapters to do these exercises. On cross examination, he acknowledged that most of the equipment mentioned in the chapters was used throughout the mill. He also agreed that an understanding of theory aids an employee in working on equipment.

Another Union witness who is now an electrical technician but who has worked as a motor inspector testified that the chapters in PCII were too theoretical and had little to do with the work. He said the material focuses on component levels, but that the motor inspectors change the black box, not the component. He also said that he would not spend any time trying to analyze a fault current in a rectifier, which is covered in one of the chapters. The witness said he

thinks the general information relevant to repair power converters is contained in the PCI unit of the course and that if an apprentice passes that exam, he does not need PCII. The witness also testified about the OJT program at the caster. He said there was no structured program for the motor inspectors. On cross examination, he agreed that he would answer questions about power converters if the apprentices asked and also agreed that helping to train them is part of his job. He also said that he did not think a better educated motor inspector was a better motor inspector, although he agreed that motor inspectors should not be just "parts changers." He said if a box continues to fail, then it is necessary to understand why that is happening.

A MECO who started in the apprenticeship program in 1974 testified that the PCII material has no relevance to his job because it is "all theory." He also said that apprentices sometimes do "trivial stuff" which would not help them understand the material in PCII. Prior to his employment at Inland, the witness took numerous electronic classes at Purdue. He said these had no "direct correlation" to his job, but that he thought the classes gave him an advantage over other apprentices who did not have this additional training in theory. He agreed that part of his job is to help apprentices and he said that "sharing expertise" is what OJT is all about.

An employee hired in 1999 and who just recently became a standard testified that he thought the PCII material was "way beyond his scope." And this was true even though he had been an electrical systems specialist in the Air Force and had taken classes at the University of Massachusetts. He said he thought the material was also beyond the scope of the instructors and that he thought he would never need to know it. He said during the class, the instructor stomped on the floor when he covered something in PCII that he thought would be on the exam. This typically did not happen in other classes. He said he passed the test because he memorized the

areas pointed out by the instructor. The witness said he did not receive OJT for PCII and that he was not even aware that the equipment he worked on had power converters. On cross examination, the witness agreed that there was no specific OJT for any of the apprenticeship classroom courses.

A witness who, like Grievant, failed the PCII test twice, said the material was difficult and that when the instructor got to an important area, he identified it as a "Paul Revere." He said there was no OJT for PCII. He also criticized the remedial training offered to him after he failed the first exam. He said the instructor went over the questions they had missed for the first three hours and that the remaining five hours were spent reviewing the rest of the material.

The Griever reviewed turn reports from 4 BOF that showed work some of the apprentices, including Grievant, were doing. He said there was nothing on the reports that concerned power converters. He also reviewed an exhibit showing work Grievant had done and concluded that none of it related to power converters. The Company said there were power converters in some of the equipment Grievant had worked on, though the problem at issue may not have involved a converter.

Grievant described a learning disability that sometimes causes him to have difficulty grasping theory when it is not related "to a real life aspect." He said this makes OJT particularly valuable for him. He said that during the classroom phase on PCII, the instructor went through the book and pointed to important areas as "Paul Reveres." This actually identified all of the areas treated on the first test, but not on the second one. After Grievant failed the first exam, the instructor met with the students who had failed and went over the questions they had missed. After that, he went through the book "page-by-page." Grievant said he had taken the Flexpak

hands-on training, but that it had nothing to do with PCII. He agreed on cross examination that because of his learning disability he was allowed to take extra time on the exam – which he did not use – and that he was allowed to go to extra classes or ask for tutoring, which he did not do. Grievant said he had dropped all of his classes at Purdue so he could concentrate on the course.

The instructor for PCII testified that Grievant received eight hours of remediation, as required by the CAG. He said he began by going over the questions the students had missed and then did a general review of the material. If students had missed lots of questions from particular areas, then he spent more time on those areas. He did not actually see the test, though someone from the training area gave him a synopsis of the questions that had been missed. He agreed that he used the term Paul Revere to identify areas that he thought were "crucial to passing the course." However, he had not actually seen the tests. On cross examination, the witness acknowledged that he did not know exactly what motor inspectors did and he said some parts of the course were more important for design than for troubleshooting.

Jerry Simpson is the Training Coordinator for Craft Training. He said vocational education is hands-on training and that the classroom provides related education to give apprentices an understanding of theory. He said the Company had built labs for hands-on projects. He also said Grievant had not told his instructors he was having trouble with PCII and that even though tutoring was available, Grievant did not ask for it. Grievant was given one-and-three-fourths hours for each exam (105 minutes), though he finished each one in 53 minutes. Grievant also did not elect to audit classes, which he had the right to do. Grievant said he hadn't done this because it would cause him to lose pay, though the Company says Grievant knew it would be flexible with him on scheduling.

Simpson said he looked at documents under the work order system and that Grievant was exposed to equipment that had power converters, even though the power converters may not have been a problem at the time. However, Grievant knew he was in the PCII class and he could have asked the other employees about the converters. Simpson also said there were laboratory programs in this area and that Grievant had been given additional hands-on training in the lab after he failed the first exam. Simpson said the benefit of the lab was that it allowed students to see problems that might not occur when things are running well in the mill.

Terry Liesch is Electrical Supervisor for the MMD and also a craft training instructor. He helped develop the test and get it validated. He was also the one who summarized the questions Grievant missed on his exam and he gave that summary to the Instructor who did the remedial training. Liesch testified that the material in the course is job-related and that the test has been validated. He said there was also sufficient OJT, which included a Representative Performance Assignment (RPA) in which students troubleshoot and get hands-on experience. He also testified about a Company Exhibit that listed eight reasons why the vocational education class on speed regulators is relevant to PCII. It is not necessary to discuss the technical aspects of that testimony in this opinion. It is noteworthy, however, that the Union did not offer any testimony that rebutted this evidence. In addition, Liesch identified an exhibit that outlined the test topics for the PCII test. He examined each area of the test and related it to duties performed by the motor inspector and information necessary to do the work. Most of this testimony related to an increased ability to troubleshoot equipment if the employee has an adequate understanding of the theory. Again, the Union did not rebut this testimony, except by general testimony from witnesses who said they did not use the PCII information in their day-to-day work.

Liesch also testified about the PCII test. He said it was job-related and that it provided "basic building blocks" for troubleshooting and for understanding more technical equipment. He said this was the kind of equipment employees would "see a lot of" in the future. On cross examination, he denied telling students not to worry about certain areas on the test, though he agreed that he may have highlighted some areas. He also agreed that the Flexpak did not include any fault currents because it would be too dangerous for a training exercise. However, he said the instructors set up the conditions and then ask the students to trace the problem and figure out what happened. He also agreed that students could find a blown fuse without PCII, but he said the relevance of PCII is that if fuses keep blowing, the motor inspector needs to understand what's happening. In the course of this witness' testimony about OJT, the Company stipulated that the employees did not have hands-on opportunities for every subject covered by the test. The witness said the Company cannot control what happens in the field.

Other Company witnesses also testified that employees cannot troubleshoot effectively unless they understand how devices work and that the training at issue is relevant for this purpose. One witness said he takes apprentices into the field to show them how to troubleshoot and that he has answered questions from apprentices about the PCII material.

In rebuttal, the Union called Christopher Smith, an Associate Professor at Purdue North Central. He said his familiarity with the motor inspector job stems from discussions with students about their work. He also has contact with some employers who employ motor inspectors. He reviewed the PCII material and thought there was "too much theory." He also thought there was too little mention of practical applications. He said he thought an engineering professional would like the manual but that it should be more practical. He also thought the hands-on

program – apparently Flexpak – was not particularly relevant to the class material. He noted that other steel companies in the area have better-designed programs for this subject. The Union also called an apprentice who took the PCII exam the Friday before the second day of hearing. He said it was not relevant to his work and that he does not see rectifiers on a "regular basis." On cross examination, he agreed that the motor inspectors were willing to answer questions about his training areas.

In addition to the merits, the Company argued that the issue of the job-relatedness of the test had already been settled by another grievance. On February 10, 2000, the Union filed Grievance PW-W-013, claiming that the Company violated the Agreement by "developing and implementing new written tests for the Vocational Motor Inspector Program." The relief sought was the "development of the appropriate tests...." The Step 3-4 disposition dated August 25, 2000, reads as follows:

> The Company's testing consultant has submitted the final technical report and test validation documentation to the Union for their review. Upon this review, the grievance was withdrawn without prejudice to any other situation or grievance.

The Company claims this settlement effectively resolves this case, in which the Union contends that the PCII test violates the Agreement, the same claim made in PW-W-013. Tim Kinach, Section Manager of Union Relations, testified that the grievance challenged the test and one of the issues was the validation study, which the Company had failed to furnish to the Union in accordance with Appendix F of the Agreement. Once the Company furnished it, he said, the Union withdrew the grievance. On cross examination, Kinach said he didn't see what was sent out to the Union. He also said he didn't know what specific tests were at issue in PW-W-013.

Luis Aguilar, Vice Chairman of the Grievance Committee, testified that he went into Kinach's office with Darryl Reed, and Kinach said the Company had sent the material. Aguilar replied, "Then that's what we asked you to do," and apparently Reed, the Grievance Committee Secretary, signed the withdrawal at that time. Aguilar said he and Kinach did not discuss the grievance, though Aguilar said he knew it related only to an entry level test.

Steve Wagner testified that PW-W-013 had to do with issues concerning material the apprentices were being required to learn at the entry level and whether math could be inserted at the beginning of the apprenticeship. He identified a Union exhibit that he prepared because the grievance form itself did not have a space for supporting facts. It does mention requirements for VMI-7, which is the entry level. He said there were also other grievances over testing requirements, some of which had been settled. On cross examination he acknowledged that he was not involved in the grievance process itself, but said that it had been filed at his urging, a fact confirmed by Grievance Chairman Dennis Shattuck. Finally, Mike Mezo, International Representative, testified that he doesn't recall getting information about the entire battery of tests and that there is nothing in the Union's records about it.

The Union advances four arguments in this case. It claims that the Company is in violation of the Craft Administrative Guidelines (CAG) because it trained employees in an area of expertise not relevant to their craft; that the Company violated Appendix F of the Agreement by using a test that was not job related; that the Company failed to provide hands-on training for PCII; and that it did not provide proper remedial training. The Union says that the knowledge required by PCII goes beyond what a motor inspector needs to know to do the job. It concerns design theory, which is far beyond what such employees are expected to do. The instructors

know this, the Union says, which is why they identify areas likely to be tested, even though they do not do that in other classes. The Union says the book contains "too much detail and more than they need to know." The test, too, is not job related, the Union claims. There is a symbiotic relationship between the course and the test. If the material is not job related, then neither is the test over that material.

The Union says its most important argument is that there is insufficient hands-on training for PCII. The Union says the training is so inadequate that there is effectively none at all. None of the apprentice workers had any hands-on training on power rectifiers. Just walking by a rectifier is not enough, the Union argues. Nor is it sufficient to say the employees can ask questions. This could easily overburden the technicians, who also have trouble understanding PCII. The Union also says that Flexpak did not help employees understand PCII.

The Union also says there was no real remedial training. The instructor covered what the employees missed and then covered material he thought would be on the test. The Union contends that proper remediation under the CAG requires two meetings with the employees, one in which problem areas are identified and one which requires a "more sophisticated review" than going over questions. The Union relies on Section IV, C and D of the CAG. Paragraph C. says if the apprentice fails the test, "the results of the test will be reviewed with the apprentice, including advice as to the specific areas in which improvement is needed." Paragraph D requires a remedial class, in this case lasting 8 hours, which will begin "as soon as practicable after the performance review." This did not happen here, the Union says, since everything was done in one eight hour meeting.

The Company argues, first, that the portion of the grievance contending that the PCII test is inappropriate concerns an already-settled issue and, therefore, is precluded. The Company also asserts that this issue was not raised until shortly before the hearing and is therefore untimely. The test has been given over for twelve years and has not previously been challenged. Appendix F requires the Company to give the Union information concerning the test. The withdrawal of PW-W-013 indicates that the Company did so here. The Company says the time to challenge the grievance was at that point. The Company also says that Article 6, Section 5 requires that only "one matter" is to be covered on a grievance form. Here, the Union has raised several issues concerning job relatedness of the test and the training, as well as the availability of OJT and remediation. The Company also says that the PCII training module is appropriate and is job related. The evidence established that the employees need this information to assist in troubleshooting.

The Company also disagreed with the Union's claim that there was insufficient hands-on training. The CAG requires that training be appropriate, a standard the Company met in this case. All apprentices received training on the Flexpak and Grievant got an additional four hours. The Company also notes that the CAG says that employees will not be tested over material that is not included in "related classroom or on the job training." (emphasis added). Some subjects, the Company says, are best covered in the classroom. In recent years, only two of 18 apprentices have failed to pass the test. This is evidence, the Company argues, that employees were given the training they needed to pass the test. Finally, the Company argues that Grievant's remedial training was sufficient. He had "extraordinary opportunities" for assistance, which he elected not to use.

As to the procedural argument, the Union says PW-W-013 did not settle the issues in the instant case. The background discussion, recognized in a Union exhibit, related to a particular test, which is not at issue in this case. Even if the grievance were interpreted more broadly, the Union never actually received the material. Thus, the grievance would not be binding. With respect to timeliness, the Union says the theories evolved as it studied the case. But this was not a new grievance and it continues to protest Grievant's removal from the program.

Findings and Discussion

a. The Arbitrability Issues

The Step 3-4 disposition introduced as Company Exhibit 1 withdraws a grievance that protested "new written tests," a category that could presumably include the one at issue here. The Union advances two theories about why the settlement is not preclusive in this case. It says the Union never actually received the test information that was the basis for the withdrawal, thus apparently arguing that the withdrawal isn't binding because the deal wasn't kept. But it is too late to make that claim now. The Disposition itself says the Company "has submitted" the information. If the Union didn't get it, the time to complain was at or near the time of the withdrawal.

The Union also says that the Supporting Facts document shows that the withdrawn grievance did not relate to the test at issue in the instant case. This defense has merit. Grievances are not always drafted as artfully as one might expect. However, these parties have a detailed grievance procedure and here the Union submitted a form containing supporting facts which

makes it clear that the tests at issue related to the VMI-7 level. This would not include the grievance involved in this case. Thus, the disposition itself did not settle this case.

But that doesn't resolve the matter because the Company says that the Union has, in effect, added a new grievance to the one already pending. In particular, the Union now attacks the est itself and the entire PCII module. The grievance in the instant case says simply, "Grievant removed from electrical apprenticeship program." The Union Supporting Facts focus on an alleged lack of OJT. In his closing argument, Mr. Shattuck said this naturally grew into a belief that the class itself was not job related and that if the class wasn't, then neither was the test. These latter two theories are not mentioned in the grievance. Nor are they mentioned in the third step minutes, so they presumably were not raised there either. This is a serious matter. The Union did not exactly spring its theory on the Company at the hearing, but it gave it only a few days' notice. More importantly, the point of the grievance procedure is to try and resolve cases. That cannot happen if a theory is not raised and explored in that forum. I recognize, however, that this is not the first time a new theory has appeared at arbitration and I am not aware of any Inland decision that holds a theory not raised in the third step cannot be advanced at arbitration, provided the other party is given time to prepare to refute it. I need not decide that issue in this case because I am convinced the Union's claims are invalid in any event. Thus, the Company is not prejudiced in this case by considering the claims on the merits. However, this should not be understood as a ruling that new theories are always appropriate in arbitrations, an issue that is reserved for a later day.[1]

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[1]Whether the Union's claims can be raised at this point or not, I do not understand multiple theories to violate Article 6, Section 5, which limits a grievance to "one matter." There is only one matter at issue here, which is Grievant's removal from the apprenticeship program.

b. The Merits

The dispute at issue in this case is common in any kind of professional or craft-based training, where students are expected to master theory and then give it practical application. In law school, for example, students often complain that the theory of the classroom has no application to the practice of law. But lawyers apply theoretical concepts to practical problems everyday, sometimes without even being aware they are doing so. The same thing is no doubt true in the instant case. Some of the Union's witnesses were apprentices or inexperienced motor inspectors. They complained that the PCII class had little application in their daily work. No one doubts that their job is often – maybe predominately – routine. But apprentices are not experienced enough to know what they might need to know in two years or five years, especially in a world of rapidly changing technology. Moreover, the fact that a problem seldom arises does not mean it is improper for the Company to expect its employees to be able to approach it with a sound theoretical foundation. I realize that experienced employees testified that neither motor inspectors nor even advanced technicians needed the depth of background continued in the classroom material. These witnesses were credible and I believed them. But I also recognize that it is sometimes hard for an experienced professional to recognize how much he may have gained from introductory training in theory, since the years of practical experience may have blurred the line between classroom theory and experienced-based intuition.

What the Union principally proved is that the class may be too hard. It also used an expert witness who testified that, in his opinion, other companies – including steel companies – have a better training vehicle. This may be true. It might also be true that some of Inland's training modules in other areas are superior to those used by its competitors. But that isn't the point. The

Agreement does not require the Company to adopt the best training program, even assuming that experts could agree which one that is. Nor does it say that one must be eliminated because it is difficult. The CAG says that the purpose of the apprenticeship program is to give an apprentice the "training necessary to qualify the apprentice ... to meet the requirements of the craft." The contract provision on testing, on which the Union relies, says that the tests must be job-related, from which the Union reasons that the training, too, must be job-related. And, it points out, job-related means that it must be related to "specific requirements of that job."

But it doesn't follow from this that each aspect of the training must be directly related to the job, at least in the sense that one can point to a specific task that requires such training. Theory cannot always be pigeon-holed. The Union might be on solid ground if the Company required its apprentices to learn French, merely because someone thought the Company might someday buy components from France. But here the Company asked its students to understand certain theoretical aspects of electronic equipment that exists in the mill and on which they will work. It is not sufficient for the Union to complain that some of the assignments would be more useful for a design engineer. The Company can reasonably decide that it wants its motor inspectors to at least be exposed to such theory, even if they will never master it sufficiently to design a similar component. The motor inspectors are expected to troubleshoot and, as a Company witness explained, an aging workforce of technicians may mean that today's apprentices will have to know more sooner in their career than did some of their older colleagues.

The Union's ability to attack the actual test is difficult, because the Union does not have access to it. That is why it focused on the training program, since it reasoned that the test will mirror what is taught. But it is not necessarily true that the Company will test on everything. The

most difficult problem for the Union is that the test is validated, which at least raises a strong presumption of validity. The Company also offered an exhibit outlining the various subjects covered on the test and it had a witness explain how they were related to specific requirements of the job. The Union did not rebut this testimony, except with general declarations from employees that they didn't see the connection. But specific testimony cannot be rebutted in this fashion. Moreover, the Union's expert witness did not review the test information provided by the Company in the arbitration. As noted above, his testimony was largely devoted to his belief that the material was too hard. The fact that some of the training material may be pitched at too high a level does not necessarily undermine the program or the test. Presumably, one might make this argument by claiming that the material was so advanced that it tested employees over material that had no application to the job at hand. But the Company gave special attention to the portions most closely related to the job through the use of so-called Paul Reveres. In addition, this exam obviously is not being used to screen out disproportionate numbers of apprentices. Grievant is one of only two employees who has failed the exam since the early 1990's. A total of 64 have passed.

Nor can I find that the Company failed to give proper remedial training, as required by the CAG. There is no merit to the Union's contention that the Company improperly identified the areas of deficiency. Testing is not perfect and it is certainly true that students can have deficiencies not identified in exams. But teachers are not mind readers. All they can do is react to objective evidence, and the best objective evidence of a deficiency resides in the questions a student missed on an exam. The Union says, however, that there are to be two meetings, one in

which the deficiency is identified and one in which eight hours are spent on remedial training. All of that was accomplished in one eight hour meeting in this case.

Paragraphs C and D of CAG Section IV do seems to contemplate two steps, though not necessarily two meetings. That is, Paragraph C says that the results of the test will be reviewed with the apprentice and Paragraph D says there will be remedial training which will "commence as soon as possible after the performance review." Of course, nothing here preludes the Company from conducting a performance review and then going right into the remedial training, so that there is, in effect, one meeting. But in that event, the total time spent on remedial training would presumably be less than eight hours, some portion of the period having been devoted to the performance review. I note, however, that there is no minimum time period set out in Paragraph C. The "performance review" could be quite short. The fact that missed questions are covered in the remedial training does not necessarily make that the performance review. Focusing on missed test questions is, in fact, a common form of remedial education.

The Company's response to the Union's argument is that the remedial sessions have always been conducted the same way with no complaint from the Union. And presumably this is true, even though there have been other apprentices who failed a second exam (albeit in other modules) and were removed from the program. This provides some insight into how the parties have interpreted the provision. This grievance may serve as notice to the Company that the Union expects literal compliance with the terms of Paragraphs C and D in the future. But it is not sufficient to overturn Grievant's removal from the program. In the face of ambiguous language, the Union cannot ignore a consistent pattern of activity and then seize on it to overturn this case.

The remaining issue is the Union's argument that the OJT program for PCII was inadequate, which was the claim raised in the original grievance. I observed in Inland Award 933 that the parties agreed to on-the-job training in the CAG. Also, in that case, I rejected the Company's argument that OJT could be avoided if all employees were treated the same and most of them had passed a test without OJT. But the Company does not make that argument here. Rather, it says that it furnished actual OJT to Grievant and his coworkers, both in terms of assignments in the mill and in the Flexpak, even though there may have been aspects of the module for which there was no OJT.

This case raises issues not necessarily present in Inland 933. In that case, a employee had not received OJT following a class on lubrication theory. Lubrication is an ongoing process in the plant and it presumably would have been possible for the Company to schedule assignments in that area. In contrast, PCII covers problems that do not occur on a routine basis. Grievant was assigned to work on equipment that had power converters, but not on any in which the power converter itself was the problem addressed. Obviously, one problem with OJT is trying to insure that the matters discussed in the classroom actually occur in the mill during the appropriate period. When they do not, the Company points to the role that experienced employees play in answering questions from the apprentices. There is some merit to this argument. Grievant, after all, knew he was in a class concerning power converters and he knew he was having trouble. But there is no evidence he asked anyone for help.

In addition to the mill assignment, the Company designed a training exercise – the Flexpak – that required students to employ some of the theory discussed in the classroom. These parties obviously have a continuing disagreement about how the Company manages the on-the-job

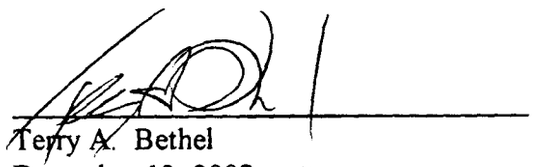
training requirement contained in the CAG. Although they agreed in this case that the issue was only the OJT for PCII, some of the evidence tended to indict the general program. One might wonder whether actual workplace experiences can be always be counted on to demonstrate each facet of any unit of instruction, especially in a timely fashion. The Union's claim here, for example, is not merely that Grievant did not receive OJT on power converters, but that he didn't receive it before he took the PCII exam. Moreover, to the extent that OJT is intended to enhance an understanding of classroom material – the argument the Union made successfully in Inland 933 – one would expect some parallel experiences between the mill assignments and the classroom. The parties' devotion to OJT as a primary training method, and the inability to predict actual events in the mill, will obviously create conflicts like the one at issue here.

A Company witness said the Company created the lab and adopted Flexpak because it had lost a previous arbitration decision. Presumably, that was Inland 933. This strikes me as a reasonable alternative to the Company's inability to insure that OJT will provide the requisite experiences in a timely fashion. This is what had not happened in Inland 933. The Union criticizes Flexpak, however, because it did not include everything covered in the classroom. I find nothing in the CAG or the Agreement that requires every classroom discussion to be demonstrated on-the-job or in labs. Nor can Inland 933 be read in that way. The problem in that case was the lack of <u>any</u> OJT, not a deficiency in a particular area. The Company is entitled to make reasonable decisions concerning what students need to know to master PCII sufficiently for its purposes. I cannot read the general language of the CAG to decide the minute details required in training. If the parties want to control the content to that extent, they have not done so in the CAG and they cannot expect to achieve it in arbitration.

I was impressed by the explanation of the hands-on training exercise and the Company's explanation about how it related to the classroom material. The Union's evidence did not undermine this explanation, covered in Company Exhibit 3. It merely pointed out that there were other ways to do this and other topics to cover. As I have already said, that is not enough to convince me that the OJT was deficient in this case.

AWARD

The grievance is denied.



Terry A. Bethel
December 13, 2002