



## **ADMINISTRATIVE**

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on July 16, 2025 in East Chicago, Indiana at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

## **PERTINENT CONTRACT PROVISIONS**

### **ARTICLE FIVE – WORKPLACE PROCEDURES**

#### **Section J. Management Rights**

**This management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.**

**In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.**

## **BACKGROUND**

The Employer, Cleveland-Cliffs, Inc. (Indiana Harbor Works), is a fully-integrated steel making facility located in East Chicago, Indiana. The Union, United Steelworkers, Local 1010, is the exclusive collective bargaining representative for all production and maintenance employees at the plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years the most recent of which is effective September 1, 2022.

A fully integrated steelmaking facility means that the entirety of the manufacturing process takes place at the plant. Raw materials including coke produced at the plant are converted into molten iron at the blast furnace. The iron is then transferred to the steel shops where it is transformed into steel slabs. These slabs are converted into coils at the 80" Hot Strip Mill and are shipped directly to the end user or downstream for further processing. The #4 Steel Shop is the subject of today's grievance.

The hourly compensation structure at Cleveland-Cliffs is a very similar to the structure used throughout the steel industry. Hourly employees are paid a base rate of pay for coming to work and performing their assignments. However, in addition to their base rate, employees can earn additional compensation through a performance-based incentive program. Incentive plans are designed to afford employees additional earnings opportunity above and beyond the hourly base rate wages they earn during that payroll period.

Indiana Harbor has nearly 2,900 bargaining unit employees covered by over 60 different and unique incentive plans. Each of the incentive plans at Indiana Harbor were designed to meet the capabilities and production expectations of their specific unit. Many factors are considered when designing an incentive plan and the number of planned outages for the unit is among the factors considered. A planned outage is a predetermined shutdown of a production unit to perform necessary preventative and routine maintenance tasks and/or equipment upgrades. Generally, incentive plans include a provision on how to handle the incentive payout during planned outages.

At issue in this arbitration, is the claim of the Union that the Company did not appropriately pay the wage incentive during a caster outage during the pay period 9-22-24 through 10-5-24. The 4SP incentive plan (90-0001) payout is contingent on whether a planned

outage occurred during the applicable pay period. If a planned outage of greater than 24 hours occurs, the plan states:

**“If a caster outage in excess of 24 hours occurs, the average earnings for the previous six pay periods shall be paid for the entire pay period.”**

Prior to 2024 4SP was essentially a revolving turnstile for employees due to inequitable earnings opportunities. There was no stability and as a result the parties decided to address this issue through re-negotiating the incentive plan which had been in effect since 1991. The 4SP incentive plan is an additional earnings plan that rewards employees beyond their guaranteed rates of pay. When steelmakers achieve the metrics set forth, they receive additional money for their efforts.

On January 5, 2024 Senior General Manager Ladale Combs sent a letter memorializing the parties’ goals: the pre-existing 4SP plan was “yielding inequitable incentive earnings . . . which . . . impacted the ability to maintain a stable workforce”. The Company’s revised plan was therefore “designed to provide enhanced earnings opportunities” so employees would remain and excel. Early in 2024 the Union was not in full agreement with the proposed revised incentive plan as there were some additional issues to be addressed. Ultimately, in September of 2024 the parties delivered on that objective. After months of data-driven joint work, the parties signed the 2024 plan which ties earnings to three transparent metrics: quality tons, %-quality, and caster utilization which steers away from a mostly tonnage-based plan and focusing on the world class steelmaking abilities with a more quality driven plan.

During the 9/22/24-10/5/24 pay period, those metrics drove extraordinary performance when employees posted 91 points despite a 48-hour outage but were paid only on the basis of

66.64 points, which was the previous six-pay-period average. On October 21, 2024 the following grievance was filed:

**“Step 1 – Written Record – Union Position & Supporting Facts**

**Grievance #4A24032**

**Department: 4SP**

**Date submitted: 10/21/2024**

**Statement of Grievance: The Union is challenging the Company not paying out the incentive that 4 Steel Producing earned.**

**Contract Provisions cited: Including but not limited to ART 5J, and all other articles that may apply.**

**Facts: During the pay period 9/22/24 – 10/5/24 the shop ran extremely well. The total points earned according to the incentive plan was 91, despite there being a 48 hr outage during that timeframe. The shop’s production was due to the hard work and effort that all Employees put in before, during, and coming out of said outage. The Company chose to pay out the 6 pay period average which was 66.64 points.**

**Position & reasons therefore: The Union believes that the incentive plan language was not designed for employees to lose money.**

**Remedy requests: Pay out points earned if they are greater than the 6 pay period average for this pay period, and all future pay periods.”**

**ISSUE**

Whether the Employer properly paid incentive wages for the 9/22/24-10/5/24 pay period?

If not, what should be the appropriate remedy?

**POSITION OF UNION**

The evidence proves the parties struck a clear bargain and lived by it. Plant Manager Ladale Combs acknowledged in writing that 4SP’s 2024 overhaul existed “to provide enhanced

earnings opportunities and stop turnover,” because the old plan paid incentives “inequitably”. Consistent with that purpose, the Company paid the higher of (i) the calculated points or (ii) the six-pay period average for every pay period in 2024 --- until after the incentive plan was signed, when it abruptly reverted to the lower average. I remind you that the Company’s own version of the incentive plan was implemented in January 2024 and the parties agreed to the incentive in September 2024. While the Company’s incentive plan was in place (which included “planned” 6pp average) they paid actual earnings of employees during the pay period ending 5/4/2024 that included a “planned” outage – it was once this occurred the Union knew the parties were on the same page with Note 1 of the incentive plan. This was not a misapplication or being generous as they described today at arbitration. It was the new plan design. We know this because the Union successfully proved that the email sent from Alissa Rosario to James Thomas was in relation to a data error and not misapplication. That data error was again proven by the Union of actual earnings initially reported at 87 – which eventually turned into 91. This is the data error.

At the Step-2 hearing during the grievance procedure, management went further, strengthening the Union’s position, conceding on the record that Note 1 “should state 6-PP average or the actual calculation, whichever is higher.” . . . That admission confirms that the parties already practiced and what common sense demands: Note 1 sets a floor, never a ceiling. This was un rebutted by the Company.

Nothing in the incentive plan or bargaining history supports a unilateral cap on performance. To accept the Company’s new theory would nullify the very incentive both sides crafted and signed. Elkouri teaches that an arbitrator must “confirm and continue the accepted ratio of work and pay” so the quid pro quo of incentive systems is preserved.

A clear inconsistent practice existed prior to the implementation of new incentive plans at 4SP. Why would the Union accept something that dis-incentivizes the very members that Mr. Combs says is “yielding inequitable incentive earnings?”

A footnote on the almost last page cannot control and override the hard-earned incentive that the world class steelmakers at 4SP earned.

The only remedy faithful to that principle – and to the parties’ own words and conduct – is to direct payment of the fully calculated points for 9/22-10/5/24 and to order the Company to pay the employees what they earned per the incentive plan going forward and apply the 6pp average only when it is less during the outage.

#### **POSITION OF COMPANY**

Mr. Arbitrator, after hearing all the testimony and reviewing all the evidence, the Company has clearly demonstrated that it has consistently applied the caster outage incentive language and has not violated the agreed-to written terms of the #4 Steel Producing incentive agreement.

Through testimony, the Company demonstrated the consistency of its application of the caster outage language. The Company showed that since 1991 it has consistently applied this language, with the exception of only one pay period in 2017 in which the Company elected to pay the greater of the two computations. You heard testimony that the Company’s Plant General Manager chose to pay the calculated rate instead of the six (6) pay period average due to generosity, and not due to the Company’s failure to appropriately execute NOTE 1 in the 4SP incentive plan document. One time over 34 years does not make a practice inconsistent –

especially since the evidence shows more than forty (40) other instances when the outage language has been applied consistent with the plan document.

Further, as shown in testimony, there was also six (6) instances identified in Company Exhibit #5 that highlight a pay period when the six (6) pay period average was less than the calculated incentive, yet the 6 pay period average was paid in accordance with the incentive plan document. None of those pay periods were grieved by the Union and that testimony was unrebutted by the Union today. These six occurrences, as shown in Company Exhibit #5, along with more than forty (40) other pay periods since 2010, were all paid appropriately, consistent with the incentive plan document.

As you witnessed today, the Union has tried to cloud the issue by suggesting the Company paid the calculated rate (instead of the 6 pay period average) for pay period 5-4-24, claiming the Company has been inconsistent in its application of the outage language. However, through Company testimony and email evidence, the Company proved that pay period was paid in error. In addition, when the Union inquired as to what would be done regarding the error and overpayment, the Company informed them that the overpayment was not due to a misapplication of the incentive plan, but rather a data entry error in a spreadsheet, and the Company was choosing not to recoup the overpayment. At the same time, the Company put the Union on notice that going forward it would continue to apply the outage language as stated in the plan, and that the language will be enforced moving forward, as it has been consistently applied for many, many years. The Company pointed out that the decision to leave the payout as is, in excess of the terms of the incentive plan, was not precedent setting, and was not intended to be repeated. In response to that notification via email, the Union did not raise any objection

regarding the future application of the provision, but rather stated, “Thanks for the information, I will pass it along to the reps.”

You heard the Union claim today that the Company was punishing the team members for coming out of the outage strong and refusing to pay the higher calculated rate, but that is simply not true. Mr. Arbitrator, to re-emphasize, the intent of all incentive plans is to drive consistent performance for every pay period. As you heard today, if there is consistent performance, the 6 pay period average would be higher than the calculated rate. The plans are designed to reward consistent good performance, not just reward for coming out of an outage strong as referenced by the Union.

Despite the Union’s assertion today, there is nothing in the incentive plan document that states the Company must pay the higher of the two rates during a caster outage. Other than the grieved pay period, the Union has never challenged any of the previous pay periods, which is indicative of an understanding as to the application of the language. Moreover, as recently as 2023, during negotiations between the parties to modify the incentive plan, the Union had the opportunity to request a change to the plan to pay the higher of the two calculations during a planned caster outage, but they did not do so. In fact, the Company witness credibility testified that paying the higher of the two rates was never discussed by the parties during the recent negotiation of the incentive plan. Today, the Union is attempting to insert language into the agreed upon incentive plan document that they failed to successfully negotiate.

The Union has tried to build their case and place emphasis on what they perceive as fairness and entitlement and is relying upon settlement discussions which are nothing but fodder and not admissible in arbitration. For instance, the Union is claiming that the letter from LaDale Combs dated January 5, 2024 provided some additional reassurances that there would be

additional enhancements to the incentive plan designed to increase earnings opportunity for the employees. There was clear testimony from the Union witness that the newly designed incentive plan did in fact meet that objective. The letter also noted that “. . . the Parties agreed that modification to the existing plan would be of mutual interest to both Employees and the Company.” The Union is attempting to utilize that language to make the leap to require the Company to pay beyond what is required by the agreed-to incentive plan. However, the caster outage language was not modified.

The final agreed-to incentive plan language speaks for itself. There is nothing in the incentive plan document or the BLA which requires the payment of the higher calculated rate, rather it specifically states the contrary. Note 1 of the incentive plan states that “if a caster outage in excess of 24 hours occurs, the average earnings for the previous six pay periods shall be paid for the entire pay period.” That is the clear language that must be adhered to by the parties. Now, the Union is simply asking for money to which they are not entitled. The Company maintains that this case is straightforward, and the evidence is clear, there has not been any contractual or incentive plan violation by the Company. For these reasons, the Company respectfully requests that the grievance be denied.

### **FINDINGS AND DISCUSSION**

The essential underlying facts in the within grievance are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In

determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

The narrow issue presented within is the Union's complaint that the Company did not appropriately pay the incentive wages during a caster outage which occurred during the pay period September 22, 2024 through October 5, 2024. The Union argues that at the Step 2 grievance meeting held on November 14, 2024, the Parties "agreed" that the outage language should state six (6) pay period average or actual incentive calculation percentage, **which ever one is the higher of the two.**

The incentive payout is contingent upon whether a planned outage of more than 24-hours occurred during the subject pay period. Under those circumstances the relevant contract language provides as follows:

**"If a caster outage in excess of 24 hours occurs, the average earnings for the previous six pay periods shall be paid for the entire pay period."**

The starting point when interpreting any collective bargaining agreement language is the expressed language itself. Where that language is clear and unambiguous, absent unique circumstances such as a mutual mistake by the parties, arbitrators generally apply the clear meaning without resort to principles of contract interpretation. However, where the language is not clear on its face and the parties have conflicting interpretations, both of which are plausible, the language is found to be ambiguous.

In this situation, the Company takes the position that the relevant expressed incentive wage language is clear and unambiguous. I agree. That language provides a very clear directive to the parties: (1) if a caster outage occurs; and (2) if the outage is in excess of 24 hours; then (3)

under those circumstances the average earnings for the previous six pay periods are calculated and, (4) shall be paid for the entire pay period.

The circumstances existing within clearly meet all of those steps. More importantly, there are no contingencies or exceptions stated in the outage incentive payment language. The Company was the driving force behind amending the prior incentive language because in the past it yielded inequitable incentive earnings which, in turn, destabilized the workforce with employees moving out of 4SP positions to earn great incentives at other positions. However, nothing in those stated objectives can serve as an implied modification of the clear and unambiguous incentive language eventually agreed upon.

The Union's argument in favor of its interpretation of the incentive language is quite understandable. It believed during the months of data driven hard negotiations to change the incentive structure that extraordinary work performance coming out of an outage in an admirable result and should be rewarded by paying the points actually earned during the outage pay period rather than merely paying the average earnings for the previous six pay periods. Unfortunately, none of those good and quite reasonable expectations were in any way expressed or even intimated in the subject language. The purpose of referencing the average of the prior six (6) pay periods is quite obvious. It is to protect wages when a planned outage occurs which would normally reduce production and, in turn, diminish the resulting wages. In fact, it would be unusual for production not to be reduced when a planned outage eliminates at least twenty (20%) percent of the work hours (2 days out of 10) in a given pay period.

The Union cannot have it both ways, i.e., to be paid the prior six (6) week average when post-outage productivity is low, yet want to be paid the higher wage from actual production when that occurs, but without obtaining clear and direct language to that effect. No such

language exists anywhere within. Unwritten expectations cannot carry the day in the face of clear and unambiguous agreed upon language. I am therefore obligated to interpret the written language as is even if it is contrary to the good faith expectations and/or intentions of one of the parties.

Even assuming, arguendo, that the subject language is ambiguous, one commonly utilized interpretive tool that exists to “clarify ambiguous language” is that of the use of a “binding past practice” between the parties. However, there are rigorous standards that must be met in order for an arbitrator to find the existence of a “binding past practice”. Few questions in labor arbitration are more difficult than determining when a past practice exists, and when, if ever, it should be given the same status as if it were included in the written contract. Arbitrators have uniformly cited guidelines or standards that a course of conduct must meet before it can be regarded as a “binding past practice”. One of the most often quoted set of criteria was promulgated by Arbitrator Jules Justin, who declared that a past practice, in order to be binding on both parties, must be (1) unequivocal, (2) clearly enunciated and acted upon, and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. Essentially, in order for a past practice to be binding on the parties there must be what is characterized as "mutuality" or a "meeting of the minds" as to the practice.

Unfortunately, the few examples provided by the Union of circumstances where the clear language was not followed can be explained. For example, there was one pay period in 2017 in which the Company elected to pay the higher of the two computations. But the credible testimony was that the Plant’s General Manager decision to pay the calculated rate instead of the six pay period average was simply a matter of generosity and not due to any failure to properly execute the language of the incentive plan document.


Furthermore, there were six separate pay periods extending from 2010 through 2023 in which the six pay period average was less than the calculated incentive yet the six pay period average was paid in accordance with the incentive plan. It is important to note that none of those “inconsistencies” were ever grieved by the Union. Moreover, going back a number of years and considering all of the pay periods that exist, it is not surprising that a few aberrations would be found here or there. However, a few isolated aberrations cannot result in the conclusion that there was a clear and consistent practice mutually agreed to by the parties which became binding.

For all of the above reasons, the grievance must therefore be denied.

**AWARD**

The grievance is denied.

**Date:** Aug. 25, 2025  
**Pittsburgh, PA**

  
**Ronald F. Talarico, Esq.**  
**Arbitrator**