IN THE MATTER OF THE ARBITRATION)
)
Between)
)
ARCELORMITTAL USA, LLC)
INDIANA HARBOR)
)
and)
)
UNITED STEELWORKERS,)
LOCAL 1011)

OPINION AND AWARD

RONALD F. TALARICO, ESQ.
ARBITRATOR

Grievance No.: PW-2020-0004

Case 113

GRIEVANT

Group Grievance

ISSUE

Full Week Guarantee

VIDEO HEARING

September 24, 2020

POST-HEARING BRIEFS

Received by November 13, 2020

APPEARANCES

For the Employer
Richard L. Samson, Esq.
Norma Manjarrez, Esq.
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.

For the Union
Michael R. Millsap
District 7 Director
James Flores
Sub-District 5 Director

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. A video evidentiary hearing was held on September 24, 2020, 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. Post-hearing briefs were received from both parties by November 13, 2020, at which time the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE FIVE – WORKPLACE PROCEDURES

Section A. Local Working Conditions

. . .

2. Deprivation of Benefits

In no case shall Local Working Conditions deprive an Employee of rights under this Agreement and the conditions shall be Changed to provide the benefits established by this Agreement.

. . .

Section C. Hours of Work

. . .

4. **Full Week Guarantee**

An Employee scheduled to work will receive, during a payroll week, an opportunity to earn at least forty (40) hours of pay (including hours paid for but not worked, work opportunities declined by the Employee, disciplinary time off, absenteeism and report-off time for Union business, but excluding overtime pay and premium pay). An Employee on an approved leave of absence or disability during any payroll week shall be considered as having been provided the opportunity for this guarantee during any such week, it being understood that the pay, if any, that such an Employee is entitled to receive while on approved leave of absence or disability is that provided by applicable law or the Agreement, not the earning opportunity set forth in this Paragraph.

. . .

Section J. Management Rights

The 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.

ARTICLE EIGHT – EARNINGS SECURITY

Section A. Employment Security

1. **Objective**

The parties agree that it is in their mutual interest to provide all Employees, with at least three (3) years of Continuous Service, with the opportunity for at least forty (40) hours of pay each week.

2. **Layoff Minimization Plan**

The Company agrees that, prior to implementing any layoffs, it shall review and discuss with the Union:

a. documentation of a clear and compelling business need for the layoffs (Need);
b. the impact of the layoffs on the bargaining unit, including the number of Employees to be laid off and the duration (Impact);
c. a Layoff Minimization Plan which shall contain at least the following elements:

(1) a reduction in the use of Outside Entities;
(2) the elimination of the purchase or use of semi-finished and hot-rolled steel from outside vendors that can be reasonably produced by the Company;
(3) the minimization of the use of overtime;
(4) a program of voluntary layoffs;
(5) the use of productive alternate work assignments to reduce the number of layoffs; and
(6) a meaningful program of shared sacrifice by management, including senior management.

3. **Employee Protections**

Reference to the elements of a Layoff Minimization Plan in Paragraph 2 above shall not be construed to impair in any way any protection afforded to Employees under other provisions of this Agreement.

BACKGROUND

The Employer is ArcelorMittal USA, with plant facilities located in East Chicago, Indiana ("Company"). The Union, United Steelworkers, Local 1011 ("Union"), is the exclusive collective bargaining representative for all production and maintenance employees at the East

Chicago plant. The Company and Union have been parties to a series of collective bargaining agreements over the years, the most recent of which is effective September 1, 2018.

The Union filed the instant grievance protesting the Company's unilateral implementation of a 24-hour workweek for the week of April 12, 2020 for some employees with fewer than three (3) years of continuous service.

The relevant facts within are straightforward and not in dispute. Toward the end of the first quarter of 2020, the COVID-19 pandemic drastically reduced demand for the Company's products and the Company's business plan had to be revised in order to remain financially viable. By April 1, 2020 the Company had shut down the blast furnace and coating line. The Company determined that it had to take immediate action to reduce labor costs. Laying off probationary employees and reducing the number of hours worked by employees were the two options considered.

On April 9, 2020 the Company notified affected employees that a reduced workweek would take effect on April 12, 2020. The only employees whose workweeks were reduced were those with fewer than three (3) years of continuous service (although not all such employees had their hours reduced; business needs required some to remain on a 40-hour workweek schedule). The affected employees worked 24 hours during the week of April 12, 2020 in lieu of their usual 40 hours.

During this period of time, the Company and Union were negotiating a Layoff Minimization Plan in accordance with Article Eight of the Basic Labor Agreement. Unable to reach agreement with the Union, the Company implemented its final Layoff Minimization Plan on or about April 19, 2020. The instant case does not involve any dispute between the Company and the Union regarding the implementation of the Layoff Minimization Plan. The Union's

complaint involves the Company's unilateral reduction of hours for the affected employees during the week of April 12, 2020 – the week prior to implementation of the Layoff Minimization Plan.

Thereafter, the Union filed grievance number PW-20-04 protesting the Company's scheduling of some employees with fewer than three years of continuous service for 24-hour workweeks during the week of April 12, 2020:

> **"Statement of the Grievance: Employees are being scheduled 24 hours in a work week which is a violation of the full week guarantee.**
>
> **Union's Understanding of the Facts: ARTICLE FIVE – WORKPLACE PROCEDURES Section C Hours of Work 4. Full Week Guarantee. An Employee scheduled to work will receive, during a payroll week, an opportunity to earn at least forty (40) hours of pay (including hours paid for but not worked, work opportunities declined by the Employee, disciplinary time off, absenteeism and report-off time for Union business, but excluding overtime pay and premium pay). An employee on an approved leave of absence or disability during any payroll week shall be considered as having been provided the opportunity for this guarantee during any such week, it being understood that the pay, if any, that such an employee is entitled to receive while on approved leave of absence or disability is that provided by applicable law or the Agreement, not the earning opportunity set forth in this Paragraph.**
>
> **Union's position and reasons therefore: The company is claiming that Employees with less than 3 years of continuous service are not guaranteed 40 hours of pay per week. The Union is taking the position that if an Employee is scheduled, regardless of years of service, they are entitled to an opportunity to earn at least forty (40) hours of pay.**
>
> **Remedy Requested: Make Employees whole for lost earnings opportunity including any trailing benefits."**

ISSUE

Whether the Company violated the Basic Labor Agreement when it unilaterally implemented a 24-hour workweek for some employees with fewer than three years of continuous service. If so, what is the appropriate remedy?

POSITION OF THE UNION

Article Five, Section C, Paragraph 4 controls this case. There is no ambiguity. Every employee in the bargaining unit that is scheduled to work is entitled to an opportunity to earn 40 hours of pay. The Company relies upon Article Eight, Section A. However, if the parties intended to exclude any employees from Article Five, Section C, Paragraph 4, they would have written it into this Article. They did not.

The Company's reliance upon the Valtin Award is misplaced. That case did not involve Article Five. It involved only Article Eight and the Company's Layoff Minimization Plan. The arbitrator ruled that the Company's Layoff Minimization Plan was more reasonable than the Union's. The Company's reliance upon the Bethel Award is also misplaced. In that case, the Company's Layoff Minimization Plan provided employees fewer than 40 hours of pay when they were scheduled for 32 hours. The arbitrator ruled that the Company could not do so without the agreement of the Union.

If the Company believed it had the right to schedule 32-hour workweeks it would have made that argument in these two cases. The Company did not make that argument. The reason is because the Company did not have that right.

The objective of Article Eight, Section A, is to keep employees with at least three years of service working, with an opportunity to earn 40 hours of pay. The parties agreed that this was their goal because it is in the best interest of both parties. However, this objective does not mean that other articles of the Basic Labor Agreement have no meaning.

In 2010 the Company implemented a Layoff Minimization Plan which triggered the Valtin case. The Company did not argue that the objective to lay off gave them the right to schedule 32-hour workweeks. In fact, the Company during the Layoff Minimization Plan discussions proposed a 32-hour workweek and when the Union disagreed the Company dropped the proposal. This is because part of the letter of understanding required mutual agreement to schedule 32-hour workweeks. Although the arbitrator talks about 32-hour workweeks in his decision he did not rule on the issue because that was not the issue before him. The only issue was which Layoff Minimization Plan was more reasonable.

Article Eight, Section A, is not at issue in this case because the Company scheduled the Grievants for 24 hours during the workweek of April 12, 2020 prior to implementing its Layoff Minimization Plan. In both the Valtin Award and the Bethel Award the issue before the arbitrator was which Layoff Minimization Award was more reasonable. The arbitrator did not rule that the Company had the right to schedule 32-hour workweeks.

Article Eight, Section A, Paragraph 1, simply describes the objective of the parties. In fact, it starts by stating that the parties agree that it is in their mutual interest to provide all employees with a least three years of continuous service the opportunity for at least 40 hours. Article Eight, Section A, Paragraph 2, describes what the Company must do in the event there is a clear and compelling reason to lay off employees.

This is the Company's third attempt with three different arbitrators and three different arguments. What is unique in this case is their use of Article Eight, Section A, Paragraph 1, which the Company has never relied upon previously.

The grievance should be sustained and the Grievants made whole.

POSITION OF THE COMPANY

The only issue is whether Article Five restricts the Company's ability to utilize a reduced workweek as one of its few immediate options to address its dire economic circumstances. It does not. Article Eight, Section A, Paragraph 1, authorizes the Company to unilaterally schedule bargaining unit employees with less than three years of continuous service for fewer than 40 hours in a workweek. Article Five, Section C, Paragraph 4, does not limit or conflict with Article Eight. The decision to implement a reduced workweek for one week while the parties were negotiating a Layoff Minimization Plan was a rational one based on the Company's dismal business conditions caused by the pandemic.

The Union has failed to meet its burden of proof. The Union failed to present any evidence to show that the Company violated any provision of the Basic Labor Agreement when it unilaterally implemented a reduced workweek for about 27 employees over a duration of one week, as it is authorized to do under Article Eight, Section A, Paragraph 1, of the Basic Labor Agreement.

The controlling language is Article Eight, Section A, Paragraph 1. This provision gives the Company the right to unilaterally implement a reduced workweek for employees with less than three years of continuous service. Words must be construed with their normal, usual, common sense, and natural meaning unless it is clear the parties intended some other meaning.

Paragraph 1 expressly states that it is in both parties' interest that the Company provide all employees with at least three years of continuous service a 40-hour workweek. There is no qualifier. There is no exception.

The Union, in citing the Bethel case, is attempting to apply reasoning on facts that are clearly inapposite. In that case, the Company had implemented a 32-hour workweek for employees with *greater* than three years of service. The Union incorrectly asserted that "Mr. Bethel ruled that given the language he could not find that the Company has the right to schedule employees 32 hours under an Layoff Minimization Plan absent an agreement with the Union." In fact, Arbitrator Bethel found "no dispute between the parties that the Company can schedule employees with less than three years of continuous service for 32-hour weeks" – which is the very issue in the present case.

Arbitrator Valtin reached a similar conclusion in a 2010 case involving dueling Layoff Minimization Plans. The Company's proposal in that case included a *plant-wide* 32-hour workweek, without distinguishing those with less than three years of continuous service. Arbitrator Valtin determined that "[w]ith or without the conditions, the adoption of the 32-hour proposal required the Union's consent." He then went on to unambiguously state, "Management would have been free on its own initiative to put bargaining-unit employees with less than three years of service on 32-hour workweeks." This was a conclusion so patently obvious that even the United Steelworkers. albeit a different local, agreed that the Company had the right to do what it did here. Then-President of the Cleveland local, Mark Granakis, testified in that case that the Company could have unilaterally reduced the workweek for employees with less than three years of service.

Article Eight, Section A, Paragraph 1, is not an element of the Layoff Minimization Plan. It is readily ascertainable by the language itself that the seven elements of a Layoff Minimization Plan do not include language relating to the implementation of a reduced workweek. Article 8, Section A, Paragraph 1, is not a required element of Article 8, Section A, Paragraph 2, but rather a separate provision of Employment Security that may be applied absent a Layoff Minimization Plan.

Notably, during the June, 2020 hearings before Arbitrator Bethel involving final offer interest arbitration under Article Eight, Section A, Paragraph 2 of the Basic Labor Agreement, the Union at no point argued that the Company's Layoff Minimization Plans were unreasonable because they did not consider or include Article Eight, Section A, Paragraph 1. They understood then and simply cannot dispute now that Paragraph 1 is separate and apart from Paragraph 2.

A special remedy is not warranted if the Union prevails. Remedies for contractual violations are intended to put the parties in the same position absent the violation and to make whole the employees who have been monetarily impacted. Anything other than such an award, or a cease and desist order, would be punitive. The Basic Labor Agreement authorizes a special remedy for subcontracting violations only.

The Arbitrator should find that the Company did not violate the Basic Labor Agreement and deny the grievance.

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 issue presented is whether the Company violated the Basic Labor Agreement when it unilaterally implemented a 24-hour workweek for some employees with fewer than three years of continuous service. The 24-hour workweek was in effect for the week prior to the implementation of the Company's Layoff Minimization Plan. The Company contends that Article Eight, Section A, Paragraph 1, is clear and unambiguous and controlling. The Union takes the position that Article Five, Section C, Paragraph 4, dictates the outcome of this case and is clear and unambiguous.

The facts, which are undisputed, are set forth in full hereinabove. In a nutshell, the Company faced dire economic conditions in the spring of 2020 due to the COVID-19 pandemic, which reduced demand for its products. In accordance with Article Eight, the parties began negotiating a Layoff Minimization Plan on or about April 6, 2020.

Unable to reach agreement with the Union, the Company implemented it final Layoff Minimization Plan on or about April 19, 2020. However, the Company was of the opinion that it needed immediate relief and could not wait until the Layoff Minimization Plan went into effect. Thus, on April 9, 2020 the Company notified the Union that a 24-hour workweek for some employees with fewer than three years of continuous service would go into effect on April 12, 2020 – one week prior to the beginning of the Layoff Minimization Plan. The April 12, 2020 hours reduction was <u>not</u> a part of the Layoff Minimization Plan. The Union in the instant case does not challenge the Layoff Minimization Plan. Rather, the Union contends that the Company

did not have the right under the Basic Labor Agreement to reduce employees' hours during the week prior to the Layoff Minimization Plan.

During the week in dispute, the Company unilaterally reduced the hours for some employees with fewer than three years of continuous service from 40 hours to 24 hours. The Company relied upon Article Eight, Section A, Paragraph 1, which states, "[t]he parties agree that it is in their mutual interest to provide all Employees, with at least three (3) years of Continuous Service, with the opportunity for at least forty (40) hours of pay each week." (emphasis added). In the Company's view, Paragraph 1 only requires it to provide 40 hours per week to those employees with at least three years of continuous service. Conversely, argues the Company, it is therefore authorized to reduce the hours of any employees with fewer than three years of continuous service – which is precisely what it did in this case. No employees with greater than three years of continuous service had their hours cut below 40.

The Union relies upon Article Five, Section C, Paragraph 4. The Union contends that this paragraph clearly and unambiguously mandates that any employee who is on the schedule for a given week will receive the opportunity to earn at least 40 hours of pay. I agree. However, the Company scheduled some employees with fewer than three years of continuous service for 24-hour workweeks. That this violates Article Five, Section C, Paragraph 4, could not be more clear. Paragraph 4 contains no exception permitting the Company to schedule employees with fewer than three years of continuous service for fewer than 40 hours. It states that "[a]n Employee scheduled to work will receive, during a payroll week, an opportunity to earn at least forty (40) hours of pay. . . ." "Employees" means all employees – those with greater and those with fewer than three years of continuous service. There is no qualifier or exception in Paragraph 4.

As stated, the Company believes that Article Eight, Section A, Paragraph 1, is clear, unambiguous, and controlling. According to the Company, Paragraph 1 clearly requires the Company to schedule 40 hours for only those employees with at least three years of continuous service. The Union argues that all paragraphs of Article Eight, Section A, specifically address the parties' mutual efforts to agree upon an acceptable Layoff Minimization Plan. Conversely, the Company contends that only Paragraphs 2 and 3 apply to a Layoff Minimization Plan. Per the Company, Paragraph 1 stands alone and provides the Company with rights independent of a Layoff Minimization Plan. Specifically, the Company contends that in the instant case it had the right, under Paragraph 1, to schedule employees with fewer than three years of continuous service for fewer than 40 hours beginning on April 12, 2020, -- one week prior to the implementation of the Layoff Minimization Plan on April 19, 2020.

The Company's position is not supported by the plain language of the Basic Labor Agreement, nor is it supported by the June 7, 2010 Award by Arbitrator Rolf Valtin, nor the January 4, 2017 Award by Arbitrator Terry A. Bethel – two cases relied upon by both the Company and the Union.

The Valtin Award states, at page 7, that "with or without the conditions, the adoption of the 32-hour proposal [by the Company] requires the Union's consent." The Company relies upon the next sentence: "Management would have been free on its own initiative to put bargaining-unit employees with less than three years of service on 32-hour workweeks." Per the Company in the instant case, its reduction of hours for employees with fewer than three years of continuous service was something it was "free [to do] on its own initiative" before the implementation of the Layoff Minimization Plan on April 19, 2020.

The flaw in the Company's position is that the Company in the Valtin case was free to unilaterally implement a workweek of fewer than 40 hours, but only as part of a Layoff Minimization Plan. The Company in that case implemented the 32-hour workweek for employees with fewer than three years of continuous service as an element of its Layoff Minimization Plan. It did not do so independently of the Layoff Minimization Plan. Indeed, the entire Valtin case was about the Union's and Company's competing Layoff Minimization Plans and which was more reasonable. The Company itself in the Valtin Award relied upon Article Eight, Section A, Paragraph 1, in crafting its Layoff Minimization Plan. Clearly the Company was aware in that case that Paragraph 1 is intended to address Layoff Minimization Plans and is not a stand-alone provision unrelated to and separate from Paragraphs 2 and 3. It is clear that all three paragraphs of Article Eight, Section A address Layoff Minimization Planss, not just Paragraphs 2 and 3.

Furthermore, the caption of the Valtin Award states that the dispute involved "[t]he parties' respective Layoff Minimization Plans under Section A of Article Eight." This strongly suggests that all of Section A applies to Layoff Minimization Planss, not just Paragraphs 2 and 3.

The 2017 Bethel Award leads to the same conclusion. This Award, like the Valtin Award, addressed the issue of whether the Union or the Company presented the more reasonable Layoff Minimization Plan. The Company again cites the following sentence from that Award in support of its position in the instant case: "There is no dispute between the parties that the Company can schedule employees with less than three years of continuous service for 32-hour workweeks."

However, the Company in the Bethel case had the right to schedule employees with fewer than three years of continuous service for fewer than 40 hours as part of its Layoff

Minimization Plan. The Bethel Award, like the Valtin Award, clearly shows that all three paragraphs of Article Eight, Section A, apply to an Layoff Minimization Plan. Contrary to the Company's assertion, Paragraph 1 does not stand alone. In the instant case, the Company relied upon Paragraph 1 for the proposition that it had the right to schedule employees with less than three years of service for fewer than 40 hours – independent of and prior to the implementation of the Layoff Minimization Plan on April 19, 2020. This is clearly an incorrect interpretation of Article Eight, Section A, and the Valtin and Bethel Awards.

Equally supportive of the Union's position is the rule of contract construction that a collective bargaining agreement should be read as a whole and all words and clauses in the agreement should be given effect. The fact that a word or clause is included in a collective bargaining agreement indicates that the parties intended that it have meaning and is not surplusage. In the instant case, Article Five, Section C, Paragraph 4, clearly and unambiguously mandates that an employee scheduled for a given week will be given an opportunity to earn at least 40 hours of pay for that week. There is no stated exception for employees with fewer than three years of continuous service. All employees scheduled to work must be given this opportunity.

If one were to read Paragraph 1 of Article Eight, Section A, as independent of Paragraphs 2 and 3 – in other words, if the Company was free to schedule employees with fewer than three years of continuous service for fewer than 40 hours even in the absence of a Layoff Minimization Plan – then Article Five, Section C, Paragraph 4, would be rendered meaningless. It is presumed that companies and unions do not negotiate meaningless language into a contract, and certainly would not do so with a provision as important and impactful as Article Five, Section C, Paragraph 4.

The only way that Paragraph 4 can be rendered meaningful, and not surplusage, is by interpreting all three paragraphs of Article Eight, Section A, as applying to a Layoff Minimization Plan and only a Layoff Minimization Plan. Construing Paragraph 1 as separate and independent of Paragraphs 2 and 3 would render Article Five, Section C, Paragraph 4, meaningless – something it is presumed the parties did not intend.

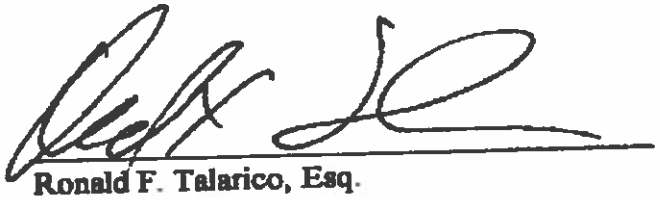
In light of all of the foregoing, the grievance must therefore be sustained.

AWARD

The grievance is sustained. All employees who worked only 24 hours during the week of April 12, 2020, shall be made whole in all respects consistent with 40 hours of work.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date: Nov. 30, 2020
Pittsburgh, PA



Ronald F. Talarico, Esq.
Arbitrator