

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Algoma Steel Inc. (the Employer)

- and -

United Steelworkers of America, Local 2251 (the Union)

AND IN THE MATTER OF General Nature Grievance 05-558 regarding contracting out, Templates T05-293, 407, 422, 427, 429, 471, 472, 481, 483, 484, 487, 500, 503, 506, and one allegation of no template, being the work of carpenters in the steelworks during the October 2005 down day.

Heard Before: Daniel Harris, Sole Arbitrator

Date of Hearing: February 6, 7, 8, 9 2007

Decision Date: February 21, 2007

Appearances:

For the Employer: Ross Dunsmore and Steve Orr

For the Union: Mike Da Prat, Merle Evans and others

AWARD

The Proceedings

This award deals with a portion of general nature grievance 05-558, the second of five general nature grievances regarding contracting out that are before me. In the course of the four days of hearing held on this matter, a number of common arguments were dealt with. There were also some case management issues that were addressed. Finally, fifteen templates were dealt with. In all, it appears that the parties are achieving some success in fashioning an expedited process for dealing with these grievances.

The Common Arguments

The union submitted a number of emails to establish that a preliminary exemptions list had been agreed to in the final minutes of the negotiations that led to the August 1, 2004 collective agreement and that the exemptions list had subsequently been removed with notice. The exemptions list is contemplated by the "Letter of Agreement Re: Contracting Out Review" and Article 1.02.11. The letter's provisions are as follows:

The parties have developed a preliminary "Exemption List" (attached)

All items on the Exemption list will be subject to a regular review/renewal period. Those items on the "Exemption List" which directly or indirectly permits the use of contractors shall only be valid and enforceable once reduced to writing and signed by the President of the Local Union. Any such agreement shall expire on the Termination Date of this Agreement, unless signed by a Representative of the International Union. Items on the Exemption List can be removed with 30 days' notice by either party. If there are members who are displaced, laid off or will be laid off, who are capable of performing such work, such work will be assigned to such members and removed from the Exemption List. Until the work is removed from the Exemption List, any displaced employees will be assigned suitable work.

The purpose of the Exemptions List is to establish an agreed upon list of items which the employer is permitted to contract out and which are thereby exempt from the requirements of article 1.02.11.

The emails were tendered to establish that senior management knew or ought to have known that there was no work exempt from the requirements of article 1.02.11.

The employer responded to these arguments by concurring that the union had exercised its rights to eliminate the list because it felt there had not been the promised further discussion of the lists. It was also noted that the parties agree that the fact that an item had initially been placed on the exemption list was not a concession that it was "work normally performed" by the bargaining unit.

The next common argument dealt with the requirement that all templates must go to the Joint Steering Committee (JSC). The union said that that requirement had the effect of putting the front line supervisors on notice that senior management would be made aware of their contracting out requests, it ensured notice to the union of contracting out and underpinned the block force planning process.

The employer conceded that my earlier awards recognized the requirement that the templates were to be provided by the company to the JSC. However, it also submitted that both the union and the company may introduce discussion of the templates. Further, it is still a live issue whether a “blanket” contract, e.g. to provide hoists, requires only one referral to the JSC or whether each exercise of such a contract must be discussed.

The union also raised a concern that emergency contracting out was increasing in frequency. The Company disputed the union’s interpretation that the test of an emergency was that it would be quicker to contract out the job.

The union also raised a concern that the front-line supervisors were bound by the 2003 Company-wide Market Adjustment Plan and the resultant Model Manning Numbers which put caps on departmental employment levels. It had submitted a number of documents relating to these issues as part of template 484 (Cokemaking Screening Station Water Line Repair). The employer agreed that although that template had been withdrawn, the documents remained as part of the record.

The most contentious common argument was the company’s submission that the union was estopped from objecting to the form of template being used by the front-line supervisors because the union had approved, or provided, that form.

Many supervisors testified that they had used a template which they had downloaded from the mainframe computer’s Professional Office System (PROFS). It was the company’s position that the form of the template had been agreed to by the Union Cochair of the Departmental Steering Committee, Mr. Coghill, during the 1996 to 1998 period, and that Mr. Laurie Wilson, Superintendent of Labour Relations, was never informed of any outright rejection of the template form. The company conceded that the union was requesting that the form be improved but it had no indication that the previously agreed to form could no longer be used.

This issue was resolved on the basis that the company withdrew its estoppel claim and the union reserved the right to argue that as of August 1, 2004, the substantive requirements of a contracting out template were governed by article 1.02.11

Case Management Issues

The first case management issue was a union concern that the company was interfering with its ability to contribute to the Joint Contracting Out Review process by improperly refusing to pay Mark Molinaro, the Union Co-Chair. The company said that it was only declining to pay his wages for time spent solely on union business. That is, preparation

for or furthering arbitration litigation. In the end, the union put this issue in abeyance, reserving its rights to raise it in final argument in this grievance.

Next, the union proposed that the company arrange for an administration employee to give a presentation to this Board of Arbitration covering the basis upon which internal job costing is calculated and a presentation covering the bargaining unit classification system as it pertains to the skill levels and remuneration of the various jobs. These presentations are meant to provide a basis upon which comparisons might be made on the costeffectiveness of contracting work out vs. keeping it inside or, in the second instance, assigning work to other than the usual classifications. It was agreed that the union would file any documents needed to establish these points and the company did not rule out providing such a presentation.

In view of the degree of progress being made in hearing these matters and the ongoing development of various issues, it was agreed that the next two days of hearing would be dedicated to continuing to consider the remaining templates. In view of the fact that the hearings on special remedies would thereby be put off, it was agreed that the timelines in my Order dated January 25, 2007 are extended as follows:

Union production: extended from January 25

Company production: extended from February 12 to March 2nd

Union will-say statements: by March 9, 2007

It was also agreed that as various witnesses gave their evidence on the individual templates they could be cross-examined on matters related to the special remedies to be dealt with in argument at the close of the hearings on this grievance. The Order of January 25, 2007 is also varied to that extent.

The Templates

T-05-293 #4 Boiler CO Gas Conversion

This involved the conversion of the #4 boiler from using coke to using natural gas. The contracting-out template was provided to the union on June 2, 2005. The union did not agree to the contracting out saying “the Company needs to hire into the occupations who normally perform this work”. The work actually started on October 3, 2005. as is the case in each of these templates, the process violations claimed by the union are set out in an addendum to the grievance and summarized in the union’s statement of fact and arguments. Here they include not submitting a completed template, not performing an overtime canvass, not advising the union of when the work was actually contracted out and not forwarding the template to the Joint Steering Committee.

The company submitted that the union had not disputed the facts put before the Board, it only objected that those facts had not been provided on the template. It said that “the work was properly contracted out because insufficient qualified employees were available in a timely fashion to perform the work required. No viable, cost effective alternatives were proposed.”

In reply, the union said that it had not implicitly agreed with the company’s facts by only stating they were not on the template. It said there was no evidence that a meeting took place on June 28, 2005 to discuss the template.

As set out in my Award of June 20, 2006, the requirement to provide a template containing the information set out in article 1 a) through 1 f) is mandatory. The union’s checklist contained in the particulars book is accurate except for its indication that the duration of the work is not included. The company estimated that the work would require 640 fitter/fitterwelder hours and 480 electrician hours. I take those estimates to apply to the non-warranty work required on the burners and represent the duration of the work known to the company at the time.

It is evident from Mr. Roussain’s email of July 8, 2005 found in the union’s particulars book that a meeting was held on June 28, 2005.

It is also evident from the company’s submissions of fact that no overtime canvass was done. Article 1.02.10 requires that overtime be offered where a sufficient number of qualified and eligible employees are available. I have previously found that a plant-wide overtime canvass is required in order to make this determination. The enquiries detailed in the company’s fact number eight do not fulfill this requirement.

There is nothing to distinguish this template from those dealt with in General Nature Grievance 05-538. Accordingly, this grievance is allowed with respect to this template on the same basis. Accepting that there were not employees available on straight time with the necessary skills to do the work, it was nonetheless a violation to fail to engage the contracting out language in its entirety. The company cannot rely on the lack of available manpower without establishing that it fulfilled its obligations to co-operate, participate and take reasonable positions in the manpower planning process required by the Collective Agreement, Letter of Agreement and Addendum. The company has not established that it met its obligations to take this template to the JSC, nor that it engaged in the block force planning etc. required by the Letter of Agreement and Addendum.

As to remedies, I have already determined that lost dues for the work in question are appropriate and I so order. Here the union has advanced other claims including all assessments and the Humanity Fund payroll deductions. It also claims various general damages for failure to consult as required and special remedies pursuant to article 1.02.40. These other common claims require full submissions and will be dealt with after the individual templates on this grievance are completed.

Based on the undisputed facts, it is more likely than not that no individual claims exist. Had individuals elected to take these overtime shifts, they more likely than not would have been in lieu of other overtime opportunities.

T-05-407 # BOSP Installation of Dart Insertion Machines

This work involved the installation of a machine which inserts a dart into the furnace. The dart floats on the surface of the molten steel and plugs the access once the molten steel drains from the furnace, preventing the slag from being released. The company said that this was not work normally performed by the bargaining unit since this involved a new process and had not been installed at ASI before. That is not the test. The template itself concedes that ASI trades would be capable of doing this work “if the trade manpower was available”. The line of cases represented by ASI and USW (unreported, E. Norris Davis, October 14, 1983) is applicable to this template. That is borne out by the fact that bargaining unit employees were ultimately used in the commissioning, rework and installation.

The duration of the work and its anticipated scheduling of it is set out on the template. It was anticipated to start in September and finish in December 2005. Work did not commence until November 11 and was not yet completed at the time the company produced its materials for this hearing. There was certainly an opportunity for this to be provided to the JSC and there is no evidence that the company fulfilled that obligation. It should be noted that this project was estimated at some 195 man-weeks duration, not a matter that should be inconsequential in terms of the company fulfilling its obligations to consult with the union at a level where decisions might be taken to ameliorate the degree of contracting out required. In my view, this is work of the bargaining unit. Again, the company may not rely upon a shortage of manpower when it has failed to honour the entirety of the contracting out language including its obligations to participate in the staffing reviews to which it committed in the Letter of Agreement and Addendum. The union is awarded lost dues. I reserve on the common damages remedies and special remedies as noted in T05-293 above.

T05-422 WCM Processor Foundation

This work involved the demolition and rebuilding of two reinforced concrete strips of foundation, each approximately twenty-two feet long and approximately two feet wide by two feet deep, requiring approximately six cubic yards of ready mix concrete. The company correctly submitted that the essence of this dispute is set out in its paragraph seven in its submission of facts:

7. This was specialized work requiring people with experience in demolishing concrete structures with air busters, placing rebar and then mixing and laying cement. This was not work that could be performed with gate Labour Pool employees.

The company also submitted that the union could not at this stage contradict the other facts set out in paragraphs 8, 9, 10 and 11, which establish that the Yard Gang had four

employees qualified to do this work, the Yard Gang was already committed, no plantwide canvass was conducted because the management contact person did not know it was required and the only ASI employees with the skills and experience necessary were in the Yard Gang.

The union was in no position to disprove these facts because no overtime canvass was done, no canvass was made in the first instance to the Gate Labour Pool, and the template did not go to the JSC for discussion. The union cross-examined Mr. Sawyer who conceded that he did not canvass for overtime. He said that he had no authority to hire but did have the authority to contract out. He was not provided with a copy of the collective agreement; he was given a copy of the template and told to fill it out.

The company has taken the position before me that contracting out matters are referred to the Union Management Committee for "review, discussion and resolution". Mr. Sawyer's evidence underscores his inability to engage in a discussion of all the alternatives, such as hiring. I agree with the company that the evidence is that there were only four yard gang employees capable of doing the job. I also agree with the union position taken throughout the consideration of this template that this is an entry level job. Certainly there are skills involved, which are within the grasp of many labourers. This job, on the evidence, required a seven day, around the clock effort and there were no ASI employees available because the yard gang was otherwise involved in backlog work. As was the case in the templates above, this work was contracted out due to a manpower shortage, in circumstances where the company was in default of its clear obligation to adhere to the manpower discussions mandated by the Letter of Agreement, Addendum, referral to the JSC etc. The same remedies apply as in the templates above.

T-05-427 Masonry WCM Pickler Tanks

This work involved the demolition and reconstruction of a brick wall, brick floor sections and miscellaneous wall patches in the Coldmill Pickling Tanks. This is another situation in which the reason advanced for the contracting out is the lack of manpower to assign to the work, both of bricklayers and labourers. As has been set out in the previous templates, the manpower shortages would, on a bare reading of article 1.02.10 exempt the company from obtaining the Local Union's agreement to have such work performed by members of the bargaining unit. However, in circumstances where the company has not established that it is engaged in the process outlined in the Letter of Agreement and Addendum the union is entitled to damages as set out above in my consideration of the previous templates.

As to the second requirement of article 1.02.10, the company canvassed for, and received offers of overtime. The union's complaint is that it did not canvass beyond the department and it could not know if there were skilled employees outside of the masonry department who might be willing to do the work.

The company alleged as a fact that there was an informal agreement reached between the company and the union that overtime opportunities in the masonry department would

not be made plant-wide because too many injuries had resulted from such assignments to employees outside the department. The union's written submission in response is:

2. Already ruled. Any testimony from 4 years ago is moot. Offered overtime on alternative work, see D. Carter email October 10, 2005.

The email of October 10, 2005 details M. Carter's attempts to canvass for overtime. In his will-say statement he asserted that there had been no plant-wide overtime canvass for the past five years without any grievance being filed. The union referred to a number of grievances filed as exhibit 11 and said that Jim Smith's grievance was particularly relevant. That grievance was dated July 5, 2001 and did not, on its face, relate to overtime canvassing.

Considering all of the evidence, there was an informal agreement that the overtime canvass on this template could be restricted to the Masonry Department.

T-05-429 Fabrication of 6 Light Stand Bases

This involved the fabrication for bases of light standards. The occupations involved included boilermakers and welders. Mr. Lanaway, Superintendent of the Shops Department, asked other managers if they had anyone available, as he believed that he did not. Once again, there was no manpower available and the company has not established that it was not discharging its obligations to consider these matters at the JSC and to participate in the process required by the Letter of Understanding and Addendum. General damages are awarded as set out above.

As to the overtime canvass, there was none since all Mr. Lanaway did was contact other managers. There was a breach here of article 1.02.10.

T-050471, #7BF Downday, September 21, 2005 (Electrical Support)

This involved maintenance work on the #7 Blast Furnace. This could only be done on a day when the blast furnace was down. There was an estimated 128 hours of work for erectors, fitterwelders, mechanics, carpenters, labourers and electricians. The only reason given for the contracting out was manpower. There is nothing to distinguish this template from those above. Accordingly the same general damages are awarded.

The justification for not canvassing plant wide is that specific area knowledge was required. The company candidly admits in its evidence that the work is contracted out to a company that supplies former Algoma employees. That fact buttresses my award of general damages. That fact cannot be a justification for not canvassing plant wide for employees with the required knowledge. Mr. Allen did testify that in his opinion the work required both area knowledge and the necessary technical knowledge. From experience he knew that he could obtain those requirements from contractors who would supply Algoma retirees. However, the collective agreement required that he first look inside the plant.

T-05-472, Reset #11, 777 Transmission

This involved repair to the transmission on a large Caterpillar truck. Two mechanics were assigned to repair the transmission but lacked the skills. The company brought in a technician to instruct the mechanics while they repaired it.

The union withdrew this template.

T-05-481, DSPC Downtime September 29, 2005

On September 28, 2005 there was an immediate need to repair the DSPC oscillator. The oscillator moves up and down at 400 cycles per minute which has the effect of developing a skin of steel as the pour goes through the mould and foot rollers. On September 29, 2005 production was stopped to permit the repair of the oscillator. Other work was done to take advantage of the down day. No overtime canvass was done. Two mechanics grieved and were compensated. The parties settled this template as follows:

- 1.) The union is to be paid for 32 hours lost dues. The union may argue at the close of the case that it is entitled to payment of assessments and the humanity fund on those hours;
- 2.) The union will identify four individuals who will be paid for eight hours each at the same rate as the earlier two grievors
- 3.) I remain seized.

T05-483, DSPC Downtime October 19, 2005; Install G1 Heat Trace at Turnet

This involved the installation of a heat trace on pipes that carry grease to the turret bearing. According to the template, there were 16 hours of electrical work involved that were to be completed on the October 19, 2005 downtime. The work had been identified as necessary in the winter of 2005. The company evidence was that it was not completed on a number of downtimes because it got bumped by higher priority assignments. As the cold weather approached again, it was decided to contract the work out and a template was issued October 3, 2005.

A template meeting was held October 12, 2005. The union notes of that meeting indicate that overtime was offered to similar skilled occupations but not offered to "each" occupation. Mr. Roussain's handwritten notes seem to indicate that "No OT offered on work". The company evidence was that a plant-wide overtime canvass was posted on October 7, 2005 looking for two shifts of planned electrical maintenance on the October 19, 2005 DSPC down day. The overtime canvass applied to qualified Electrical Maintenance Technicians (EMT) and Construction Electricians. I accept that there was an overtime canvass for those two occupations for this work.

The point of contention between the parties was whether linemen were qualified to do the job and which party or person should have proposed that classification. Also, where and when should such a discussion have taken place.

It was the company's view that the steward at the template meeting, Mr. Lehto, ought to have made such a proposal if the union believed such to be the case. At the hearing, Mr. Da Prat was adamant that linemen had the skills to do some or all of the job but Mr. Lehto would have no authority to enter into such discussions because linemen were out of the line of sequence to be assigned this work. Article 7.01.10 reads as follows:

7.01.10 A line of sequence is a series of jobs in a department by which an employee may advance to the top job or revert from the top job to the bottom job. New lines of sequence or changes to existing lines of sequence shall be established by agreement between the Company and the Union. The Company may after discussion with the Union Seniority Committee temporarily institute a new line of sequence for newly created jobs or may temporarily slot a new job into an existing line of sequence until a proposal is made and agreement has been reached.

On the one hand, the union objects that this job opportunity was only offered to EMT's and Construction Electricians, while on the other hand says that only the union and the company may alter a line of sequence. On that basis, neither the steward Mr. Lehto, nor the responsible manager, Mr. Coutu, had any authority to entertain such thoughts. Had Mr. Coutu's canvass for overtime included linemen, he could have expected a different range of complaints. The linemen did not normally do such work.

In my view, Mr. Coutu and Mr. Lehto both acted within their expected ambit. Mr. Coutu canvassed within the line of sequence and Mr. Lehto did not make suggestions that were beyond his authority.

Two points need to be made. First, the template is to go to the JSC pursuant to the letter of Agreement and to the Union Co-chair of the Union Management Committee pursuant to article 1.02.11. That article says that it goes to the Union Co-chair and the affected Stewards for "review, discussion and resolution". The Union Co-chair is to provide a response to the designated person. The article does not, on its face, refer the template to the Union Management Committee for purposes of reaching resolution but to union members who provide a response. It would be open to the UMC to discuss this if it chose to. The UMC includes a General Manager and a member of the Union Executive. Second, the Union Co-chair may request a meeting, not for purposes of for "the parties [to] review the plans for the work to be performed and the rationale for using outside entities". On the evidence to date, the company representatives have no authority to offer or accept a proposal to step outside of the line of sequence nor does the purpose of the meeting extend to such areas. These meetings are for the further exchange of information relating to the facts of the proposed contracting out. These have not been meetings of the UMC, although they could be if the right people attended. It may be that such an exchange leads to agreement, in which case the template goes to the JSC. If not it may lead to a grievance.

As was the case in the templates above, it was the lack of manpower that led to this contracting out and for the reasons set out in the templates above, the same damages award is made.

T-05-484, Cokemaking Screening Station Water Line Repair

This template was withdrawn by the union.

No Template, #1 Line Plate & Strip Welfare Room

This matter is adjourned pending settlement discussions.

T-05-487, #6 Boiler Carpenter Coverage

This template was withdrawn.

T-05-500, Schloeman Line Down Day

This template was withdrawn.

T-05-503, Painting H.R. Offices and Main Floor Plate & Strip Offices

The template filed in this matter on October 6, 2005 had scant information. For example, the work was described as “to paint offices at hr and main floor 89 door plate and strip”. The reasons for contracting out are given as “job will be done on 5-12 shift and weekends. No available manpower to do this. Overtime offered to carpenters with no response”. The start date was listed as October 11, 2005. A template meeting was requested October 7, 2005 and the meeting was held October 13, 2005. The meeting notes describe the work as “Just painting of offices”.

The company’s submissions of fact filed for this hearing concede that labourers “perform painting work in the Mill environment, but they have generally not been given the task of painting interior offices”. The union’s evidence included line of progression charts that showed painter handyman positions outside the Central Maintenance Servicesdepartment. On the information provided at the time, the union reasonably took the position that the skill level required might be within the scope of some labourers or painter handymen.

By the time of the hearing a more detailed factual picture had developed which included information that the paints being used included a significant proportion of toxic, epoxy formulations that required that the painting take place at night by painters skilled with such paints. Although it was likely that only the painters in Central Maintenance Services might possess such skills, it was nonetheless incumbent on Mr. Gregorini to canvass for overtime, plant wide, because he cannot be taken to know whether others outside his department might possess such skills. It is for the company reasonably to establish the skill levels required; however, the determination of whether a sufficient number of

qualified and eligible employees are available must be determined objectively across the entire enterprise. It was a violation of article 1.02.10 not to do such a canvass.

As was the case in the templates above, the unavailability of employees with necessary skills cannot be relied upon by the company when its obligations under the Letter of Agreement and Addendum have not been established by the company to have been fulfilled. The same general damages apply.

T-05-506, Cokemaking Downday (Electrical) and T-05-508, Cokemaking 12 Hour Downday

These two templates were settled on the basis that they were withdrawn without precedent or prejudice and the company agreed to pay \$392.00 in lost dues and \$43.00 into the Humanity fund.

No Template, Carpenters in Steelworks, October 2005 Down Day

This work involved the erecting and dismantling of scaffolding for the use of other trades on the down day. The union's greatest concern is that no template was provided. Their information about the work was based on a complaint from the area, which was forwarded by email October 19, 2005. This grievance was filed the next day.

The evidence discloses that a template was provided on October 13 and a general canvass was done on October 12, 2005. The evidence indicates that the template was not received by the union, due to the changeover in email systems from PROFS to Outlook. The union intimated, from the dates and times on the emails provided, that the documents had been tampered with.

In all of the circumstances I find that the tampering allegation is not made out on a sufficient standard proof. The Outlook email was sent at 11:15 am on October 13, 2005. The body of the email contained the PROFS template, dated October 13 at 11:15:28. Clearly the two systems keep track of time at different levels of detail.

As to the substance of the matter, the contracting out was because of manpower shortages and the same damages award is applicable here.

I find that the template and canvass did occur so there is no violation in those regards.

DATED at TORONTO this 21th day of February 2007.

Daniel Harris, Sole Arbitrator

Exemptions List