

IN THE MATTER OF AN ARBITRATION BETWEEN:

IPSCO INC.

**FILE COPY**

Employer  
Respondent

AND

*Do NOT REMOVE*

UNITED STEELWORKERS OF AMERICA, Local 5890 and 9061  
- Caster Grievance -

Union  
Grievor

-----  
A W A R D  
-----

before

Daniel Ish, Q.C.

Arbitrator

Heard in Regina, Saskatchewan on March 3 and 4, 1993

For the Union:

Janet McMurtry  
Wayne Krushlucki  
Larry Leblanc  
Doug Simon

For the Employer:

## INTRODUCTION

This arbitration arises as a result of a grievance brought by the Union on March 8th, 1991 which alleged that the Company was in breach of the collective bargaining agreement when it combined two jobs into one in the Caster area. The two jobs were the Run-out Operator and the Caster Helper which were combined into a classification called Operator Helper. The two former positions were the entry level and second level positions in a line of progression for the Caster. The line of progression which is contained at the back of the collective bargaining agreement includes two other positions, in ascending order they are Ladle Controller and Strand Operator.

The combination of these two jobs into the one position was done by the Company without Union agreement; indeed, that is the essence of the grievance. Nevertheless, the new position created, that of Operator Helper, continued to be in the line of progression and became the entrant level position. It was rated by the Company as a job class 10 position for the purposes of pay; the previous two positions were rated as job class 8 and job class 10 respectively. Therefore, the combination had no negative effects on the salary being paid to the affected employees, in the case of the former Run-out Operators their rate of pay increased by two classes.

The issue in this arbitration is the same one that was raised in the Spiral Mill grievance. The decision in that case was issued by me today and will be transmitted to the parties with this award. Because the issues in both cases are identical, although the facts are quite distinct, I will not repeat here the review of the arbitral authorities which established the principles that must be applied. I will be guided by the principles as outlined in the Spiral Mill award and, as there, I will place particular reliance on the decision of George Adams in *Windsor Public Utilities Commission and International Brotherhood of Electrical Workers, Local 911* (1974), 7 L.A.C. (2d) 380.

The Union in this case, as in the other case, is alleging that the combination of the two jobs into one was purely a combination of two previous positions without any significant change in the work being done. It argued that there was no legitimate business purpose for the change and, indeed, it was argued that the change was motivated by a desire to circumvent a provision of the collective agreement, namely art. 12.10(g) dealing with an employee's right to waive a movement to the next higher job in the line of progression.

The Company, on the other hand, argued that the legitimate employer objective in this case was the desire to have employees trained in all the functions of the two previous positions in the Caster area so that they are interchangeable. The advantage to the Company of this was an efficiency advantage since employees could readily be moved from one position to another on an as-needed basis. The Company also argued that safety would be enhanced by having employees trained in all duties and functions.

My task as arbitrator is to make a determination of fact. The determination is whether the reorganization by the Company was a legitimate change for proper business purposes or whether, as the Union alleges, it was simply a cosmetic change which masqueraded the old jobs under a new job classification.

## FACTS

The Caster operation of the IPSCO plant in its present form was begun in 1986. The process adopted is known as a continuous slab caster which requires molten metal to be continuously poured into a slab for the duration of each run of product. The Company determined that the continuous slab process was the most efficient one. If the continuous flow is impeded for any reason several problems can occur which impair efficiency and can be costly, such as the molten metal solidifying in the ladle.

As with the Spiral Mill grievance, I was treated to a view of the mill to see firsthand the operation in action. This I found to be very interesting and most useful to me in understanding the facts of this case.

In 1986 when the Caster operation was begun the parties entered into a Memorandum of Agreement which has become known as the Caster Start-up Agreement. The Start-up agreement was of limited duration to be effective until May 1st, 1988 and it was intended to supersede the regular collective bargaining agreement in certain areas.

In a part of the Start-up Agreement under the heading "Crew Structure" the following paragraphs appear:

The Company shall issue temporary job descriptions, temporary titles and temporary lines of progression for the start-up crews. Temporary rates of pay and temporary

classifications shall be established in accordance with the C.W.S. provisions of the Basic Labour Agreement. During the duration of this Agreement, these temporary positions and lines of progression will be continually reviewed until final determination can be made on the make-up of the crews.

The initial lines of progression in the Caster/Reheat area and a re-structuring of the teeming operation shall be as follows:

Jobs Within Lines of Progression

	<u>Caster</u>	<u>Teeming</u>
Strand Operator	Maintenance Technician	Ladle/Tundishman
Ladle Controller	Maintenance Utilityman	Ladle/Tundish Helper
Operator Helper		
Run-Out/Hotbed Operator		

Jobs Outside Lines of Progression

Re-Heat

Furnace Operator

The line of progression established in this agreement was continued subsequent to May 1st, 1988 and is identical to the line of progression appended to the current collective agreement which covers the period August 1st, 1990 to October 31st, 1993. The Start-up Agreement also contained the following clause:

In addition such employees will be obligated to accept the training, working conditions, the hours of work and perform the functions of all of the positions within the Caster/Reheat operations as required understanding that these are continuous operations.

The Start-up Agreement is not currently in force; rather, the current collective bargaining agreement between the parties applies to the Caster operation. The provisions of the agreement which have application to the current grievance, primarily art. 12.10, will be referred to later in this award.

The Caster operated with the four line of progression positions, and one bid position which is not in issue in this arbitration, from the time of start-up until March 1991. It was in March 1991 that the Company combined the Run-out Operator position and the Caster Helper position into the Operator Helper position, this action of course being the subject matter of this arbitration. It is interesting to note, however, that there does not appear to be any change in the operation of the

Caster which coincided with the job combination. The operation of the Caster since the start-up time in 1986 to the present time has not changed in any material way. This distinguishes this case from the facts in the Spiral Mill grievance since, it will be recalled, that the job combinations there coincided with a major change of operations in the Spiral Mill involving the introduction of new equipment, which involved new job duties, and a major increase in daily production.

The Caster functions on two levels. Prior to March 1991 the Run-out Operator worked on the lower level which is the end of the slab. The Caster Helper worked on the upper level at the head end of the slab. Notwithstanding the usual position of the Run-out Operator and the Caster Helper, there were times when each had duties to perform in the other area. For instance, routinely the Run-out Operator would go upstairs to help with the start-up procedure at the beginning of a new cast. Also movement was required from one position to another during the cap-off procedure that occurred when a slab had to be sealed at the end of a run. Other than in situations of emergencies or in situations of equipment breakdown, the Run-out Operator and the Caster Helper generally stayed within their own area. It is difficult to discern that there was any change in job functions beginning in March 1991 when the two jobs were combined. The primary employer witness, Harriet Dutka, in her evidence routinely referred to "ground-floor helper" and "the upstairs helper" when she described the nature of the work done by each of these helpers, it seemed identical to that which was done previously by the Run-out Operator and the Caster Helper respectively. At the start up of a new slab the ground floor helper must move upstairs to assist and, in most circumstances, he also had to assist in the cap-off procedure. This was done prior to March 1991. She testified that the upstairs helper would have to go downstairs at time of equipment breakdown. Three examples of this that were given included crane breakdown, torch breakdown and auto-tracking machine breakdown. When the equipment failed in each of these three area upstairs helpers had to be called in to perform manually the work done by the respective equipment. It is interesting to note that other upstairs employees, namely those other than in the Operator Helper class, were sometimes called upon to assist when equipment broke down.

The Company and Union witnesses were completely consistent in their evidence with respect to what occurs when there is an emergency situation such as a blocked shroud in the ladle. In such a case it is expected that virtually all employees will be moved about to assist whenever and wherever necessary.

The reason given for the job combination by the primary employer witness, Harriet Dutka, was that it allowed the employer to rotate employees in the ground floor and upstairs helper positions. The benefit to the employer of doing this would allow the employees to become trained and skilled in all aspects of the job at both locations. This would maximize efficiency and safety of the operation.

It is interesting that in her evidence, Ms. Dutka indicated that in her view the positions of Helpers did not change after March 1991. She indicated that the positions "are the same and in my view were the same always and employees should have interrelated skills." When asked in cross-examination why there was a combination of the jobs in March 1991, Ms. Dutka answered, "because there is no job differentiation."

The Union introduced through its witnesses evidence directed at the motive of the Company in making the change. One witness, Bill Edwards, testified that he was told by management that the combination occurred to do away with the problem of employees waiving a movement up the line of progression pursuant to art. 12.10(g) of the agreement. There was evidence that a number of grievances had been filed concerning the right to waive advancement up the line of progression on the Caster. Also, the evidence indicated that the Company in the last two rounds of negotiations proposed that the waiver clause be deleted.

Ms. Dutka in her evidence interpreted the grievances concerning the right to waive as a protestation by the employees against being rotated and trained. She did indicate that she had never had an outright refusal from any of her subordinates to be temporarily transferred to a position for training purposes.

## **THE ARGUMENTS**

The provisions of the collective agreement relied upon by the parties were the same ones that were relied upon in the Spiral Mill grievance. The Company relied on its general authority to manage efficiently the business and particularly the management's rights clause contained in art. 3 of the collective agreement.

The Union primarily made reference to art. 12.10 of the collective agreement dealing with the lines of progression generally. For ease of reference, art. 12.10 is reproduced here:

## Article 12.10 - Lines of Progression and Restrictions

### Production and Maintenance Employees Only.

- (a) The lines of progression shall be as set forth in this Agreement, subject to any subsequent changes agreed upon between the Company and the Union. Such changes to be in writing and signed by both parties. Any new job established in the line of progression shall become part of the line of progression.
- (b) Job seniority shall be the main reason for advancement in the line of progression.
- (c) Any employee will have the right to bid in to any line of progression in accordance with the terms of this Agreement.
- (d) An employee will hold job seniority in one line of progression only.
- (e) Employees bidding from one line of progression into another line of progression will forfeit all job seniority accumulated in the line of progression which they are vacating.
- (f) There shall be no temporary transfers within the lines of progression, above the entrance to the line except where no trained personnel are available on that shift in the line. In such instances it is agreed that when an employee holding job seniority in the line is not progressed, he shall receive the higher job class and be trained as soon as possible. This shall not apply to employees who have a waiver in effect.
- (g) If an employee not in line of progression does not desire to progress to the next higher job in the line of progression, he may decline to do so by signing a waiver to that effect, with a copy sent to the Union by the Company. The parties recognize that the efficiency of the operation may be impaired and in order to resolve any bottlenecks that may occur due to waiver problems such issues shall be referred to the Joint Seniority Committee.
- (h) In the event of a temporary vacancy, the trained employee next in the line of progression on that shift shall fill the vacancy . (Temporary - 30 days). In the event that the vacancy is expected to be greater than thirty (30) days the employee next in line to fill the position, regardless of shift, shall fill the vacancy. In either event the Company will make their decision based on the information available at the time.
- (i) If an employee passes another employee in the line due to the latter employee being unable or unwilling to move up the line, then he shall not

have the right to bump the man he passed, due to lay-off, cutback or job deletion.

- (j) If a new job is inserted in a line of progression, then the job shall be filled from the line of progression. All employees on jobs above the new job in the line shall have seniority in the new job.
- (k) Entries to the line of progression shall be by job posting, bid, and in times of lay-off or cutback by bumping.

At the beginning of the Union argument it was acknowledged that management is entitled to classify and organize its work force but that this must be done pursuant to the principles outlined in the arbitral jurisprudence and subject to any restrictions contained in the collective bargaining agreement. The March 1991 changes with respect to the two positions in the Caster area, it was argued, were done for no apparent or objective business purpose. The jobs themselves had not changed in any respect, the only change was that employees were required to rotate. Thus, the Union argued that there was no change in job functions which corresponded with the change in job title. Thus, to use the word of Arbitrator Adams, a "masquerading" of sorts took place.

The change in the job titles without a change in job functions might not be of particular consequence but for art. 12.10. It was argued that the changes unilaterally imposed by the Company had the effect of circumscribing some of the rights of the employees given in art. 12.10 of the collective agreement. One right so circumscribed was the right to waive a movement in the progression line as is contemplated and allowed by art. 12.10(g). Indeed, it was argued by the Union that this was not only an effect of the change but the denial of the waiver right was one of the purposes motivating the change by the employer.

The Union argued that if the employer had concerns with bottlenecks or other problems in the line of progression the collective agreement provided for such issues to be brought to the Joint Seniority Committee. This is expressly recognized in art. 12.10(g) by virtue of the second sentence which states, "the parties recognize that the efficiency of the operation may be impaired and in order to resolve any bottlenecks that may occur due to waiver problems such issues shall be referred to the Joint Seniority Committee". Reference was also made to a Letter of Understanding between the Company and the Union dated January 31, 1991 which sets out one of the functions of the Joint Seniority Committee to be to "resolve problems as they occur within the lines of progression." The Union relied on the fact that there was no evidence indicating that any problems with the line of progression in the Caster area were brought to the Joint Seniority Committee.



Also, in furtherance of its argument that an avenue other than unilateral action should have been pursued by the Company, the Union argued that if safety was a concern the matter could have been raised before the Occupational Health and Safety Committee. Lastly, the Union argued that in light of the provisions of art. 12.10, if the issues could not be settled in committee there was an obligation on the Company to bring them to the negotiating table.

Finally, the Union argued that all of the concerns raised by the employer as justification for the unilateral action can be met within the terms of the collective agreement. The temporary transfer provisions contained in art. 12.10(h) can be used to temporarily transfer employees to other work areas for the purposes of relief work or training.

The Company argued that there was a legitimate job reorganization by the Company in combining the two positions. It was acknowledged that the facts are different than those that were in issue in the Spiral Mill grievance. In that case there was a change of job functions whereas in the current case the purpose of the combination was to better prepare and train employees. Reference was made to the Start-up Agreement which provided that "employees will be obligated to accept the training, working conditions, the hours of work and perform the functions of all the positions within the Caster/Reheat operations as required understanding that these are continuous operations." The underlying theme of the change was "preparedness" since, it was argued, that an employee must work all functions on a regular and rotational basis otherwise there is a possibility that the "edge and ability to act quickly" would be lost. Particular weight was placed on the argument that the helpers, both upstairs and on the ground floor, must be trained so that they can act and respond immediately to all situations.

The Company also argued that the lines of progression that were contained in the Start-up Agreement and continued in the current collective agreement were not necessarily the ultimate lines of progression that would apply to the Caster. In support of this argument reference was made to the Start-up Agreement which says, "separate lines of progression will *then* be established for the Caster operation".

In short, the Company's argument was that it exercised its managerial right to reorganize by creating and abolishing positions. So long as this is done for a legitimate business purpose it is proper and recognized to be proper by the arbitral jurisprudence and by the management's rights provisions of the collective agreement. Article 12.10 of the collective

agreement does not infringe upon this right to create and abolish jobs and reference was made to the previous argument on this point put forth in the Spiral Mill grievance.

## ANALYSIS AND CONCLUSION

It is my conclusion that the Union has established that the change in job titles brought about by the combination was in fact more form than substance. The Company's own evidence supported the view that none of the job functions associated with the two previous positions changed after March 1991. What seems to have occurred is that the Company was of the view that the functions of the two previous positions were very similar and interchangeable. In the words of witness Harriet Dutka "the jobs were indistinguishable". This might be the case. However, a line of progression had been established in the Start-up Agreement which was continued to March 1991. Without a change in the nature of the operations or a change in the job functions, to unilaterally make a change in the line of progression appears to be contrary to the intent of art. 12.10. It will be recalled from the Spiral Mill grievance that I did not take the view that art. 12.10 had the effect of locking in all the positions in the line of progression but changes can only be made if they fit the principles of the arbitral jurisprudence. There must be some change in the job functions, perhaps brought about by change in the operations of the Company, which would justify a change in the classification of the jobs in the line of progression. The arbitral jurisprudence is clear that without such justification changes which may have a negative impact on the rights of employees, most commonly the rate of pay although that is not an issue in the current case, are seen to be improper as infringing upon rights established in the collective agreement.

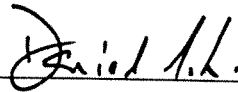
The concerns of management to have a well-trained flexible work force for efficiency and safety reasons cannot be overlooked. Indeed, it is most legitimate that these concerns be paramount. The ability to achieve this objective is present in the current article 12.10. It appears that this flexibility was contemplated when art. 12.10 was drafted since temporary transfers to other positions in the line of progression are allowed. The Union conceded at the arbitration hearing that employees could not waive temporary transfers and that the employer had a legitimate right to utilize that provision for training and relief purposes. It is my conclusion that art. 12.10 envisages precisely the kind of movement of employees that the Company requires to meet its objectives. Of course, this presumes a corresponding obligation on the employees to abide by the spirit of art. 12.10 and to co-operate with management when temporary transfers are made.

In arriving at these conclusions no particular weight was based on the Union allegation that in implementing the job combination management was motivated by desire to circumvent art. 12.10(g). The evidence of such an intention was not particularly strong. It is not necessary, however, in my view that such an intention be established if it can be shown that the change had the effect of circumventing certain negotiated rights, such as art. 12.10(g), and there was no objective legitimate purpose for the change. As indicated, this has been established by the Union.

Finally, as argued by the Union, the collective agreement does recognize that problems with the line of progression may occur and it does contemplate a method for resolving those problems. Article 12.10(g) allows such concerns to be dealt with by the Joint Seniority Committee; this is further supported by the Letter of Understanding dealing with the Joint Seniority Committee. These provisions place a responsibility on the Company and the Union alike to utilize the resolution mechanism contemplated prior to undertaking other actions. This was not done in this case. Although it is recognized that an ultimate impasse perhaps cannot be resolved by the Joint Seniority Committee in every event, the mechanisms provided for in the collective agreement were apparently designed to establish a dispute resolution process that may avoid the necessity of other actions by the Company or the Union.

For all the foregoing reasons, the grievance is allowed. I will retain jurisdiction for a period of 60 days to deal with any matters of remedy which may arise as a result of this award.

Dated at Saskatoon, Saskatchewan this 6th day of August, 1993.



---

Daniel Ish, Arbitrator