

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ESSAR STEEL ALGOMA INC.

(the “Company”)

and

UNITED STEELWORKERS, LOCAL UNION 2251

(the “Union”)

**General Nature Grievances concerning contracting out, # 07-373, 07-385,
07-399, 07-425, 07-436, 07-471, 07-505, 07-514, 08-043, 08-058, 08-085,
08-101, 08-125, 08-171, 08-235, 08-264, 08-294, 08-355, 08-401**

SOLE ARBITRATOR: John Stout

APPEARANCES:

**For the Union: Michael Da Prat, Local Union President
Mark Molinaro**

**For the Company: R. Ross Dunsmore, Counsel
Reagan Ruslim, Counsel
Brent Lanaway
Karly Charron**

**HEARINGS HELD IN SAULT STE. MARIE, ONTARIO ON SEPTEMBER 24
AND 25, 2009 AND BY TELECONFERENCE ON OCTOBER 2, 2009**

INTRODUCTION

This matter arises from my appointment to hear and determine a number of General Nature Grievances. These grievances concern the contracting out of work by the Company. In total, I am currently seized with nineteen General Nature Grievances incorporating hundreds of distinct incidents of contracting out.

The parties agreed to an expedited process to litigate these grievances in a timely and effective manner. The agreed upon process was incorporated into an award that was issued by me on October 22, 2008 (a copy of which is attached as Appendix "A"). In general, the agreed upon process included the grouping of incidents and identification of test cases for each grouping. The test cases were litigated after an exchange of documents and particulars. In total, I have issued ten awards in these proceedings.

The parties are also engaged in protracted litigation before arbitrators Craven and Harris. In both cases, the matters also involve contracting out and the process that was followed in contracting out the work. In total, the parties have referred approximately 1,000 General Nature Grievances to arbitration which incorporate thousands of distinct incidents of contracting out.

On September 22, 2009 the hearings in this matter resumed to address the issue of when the Company was required to initiate a template for work that it is considering to contract out. On September 23, 2009, the parties agreed to engage in mediation with my assistance. As a result of the mediation efforts, the parties agreed to resolve the issue by entering into an agreement. The agreement was incorporated into an award issued by me on September 24, 2009 (a copy of which is attached as Appendix "B").

On September 24, 2009 the parties requested that I continue to assist them in attempting to resolve issues arising from these proceedings and the proceedings before arbitrators Craven and Harris. Through diligent efforts the parties were

able to agree to a comprehensive settlement of the disputes. The settlement resolves the approximately 1,000 grievances. The settlement also provides for both an expedited and informal process for resolving contracting out grievances. The parties requested that I incorporate the settlement into an award.

DECISION

I hereby make the following award:

PART 1 SETTLEMENT AMOUNT (Test Cases 2, 3, 4, 5 and associated grievances)

1. All grievances grouped under Test Cases 2, 3, 4 and 5 which are listed on the attached documents – marked scheduled A, B and C respectively – are hereby settled in accordance with the following formula (the “**Settlement Amount**”):

$\text{Settlement Amount} = (x1 + x2 + x3) (y) (z)$

Where **x1** is:

The total number of hours for the grievances highlighted in yellow and not crossed off on Schedule A.

Where **x2** is:

The total number of hours for the grievances listed on Schedule B.

Where **x3** is:

The total number of hours for the grievances listed on Schedule C.

Where **y** = \$29.40 / hour

Where **z** = \$0.014 / hour

2. The Company will provide to the Union the number of hours for each of the grievances on Schedules A, B and C to which the above formula applies. The Union shall verify the number of hours within a reasonable period of time.

3. Either party may contact Arbitrator Stout for a teleconference to settle any dispute(s) arising from the application of the above formula. The parties agree that Arbitrator Stout's decision(s) on all such matters will be final and binding on both parties.
4. The Company hereby agrees to pay the Union the Settlement Amount within two weeks of the successful application of the above formula.
5. The Settlement Amount shall be calculated and paid in Canadian Dollars. The payment of the Settlement Amount fully and finally resolves all of the events in Test Cases 2, 3, 4 and 5.

PART 2

OUTSTANDING s. 49 ARBITRATIONS

1. Only the following subjects of dispute shall continue before Arbitrator Stout:

See attached list entitled "*Work Not Normally Performed – Grievances before Arbitrator Stout, cases 2 through 5 arranged in a variety of categories*"

2. For each subject listed the Company and the Union shall select one or several test cases for factual purposes. If the parties cannot agree on one or several test cases then each party may select one test case for determination. The Company shall prepare its submissions for why this type of work should not be found to be work normally performed by employees in the bargaining unit. The submissions shall be provided to the Union Co-Chair of J.C.O.C. and placed upon the J.S.C. agenda for discussion. All these matters which are not resolved by the parties shall be presented to Arbitrator Stout for his determination starting on December 14, 15, 2009 and continuing on January 18, 19 and February 4, 5, 18, 19, 25, 26 2010. Arbitrator Stout shall have the authority, which is provided to him in his award dated September 23, 2009.
3. The question of whether or not any additional penalty against the Company for continuous violations of its Collective Agreement related to the groupings in Test Cases 2,3 and 5 and the question of whether or not Arbitrator Stout should exercise his discretion under Article 1.02.40 to award a penalty against the Union related to its continuous failure to respond to templates in a timely fashion in Test Cases 2 or 5 shall be deferred until Arbitrator Stout has determined all matters presently before him respecting Test Cases 2, 3, 4 and 5. Thereafter, either party may apply to him for a hearing respecting either or both of the questions above.
- 4.

- a. All other outstanding general nature contracting out grievances filed up to and including September 23, 2009 are hereby withdrawn without prejudice or precedent.
- b. Notwithstanding the above, grievance 09-622 shall remain outstanding.

PART 3
FUTURE GENERAL NATURE
CONTRACTING OUT GRIEVANCES

- 1.
 - a. The parties agree that no general nature grievances on contracting out will be filed respecting any of the subjects listed above until thirty days after Arbitrator Stout issues his award respecting a particular subject area. Thereafter, no general nature contracting out grievance may be referred to arbitration if either party alleges that the subject is covered by a previous decision of Arbitrator Stout. If such an allegation is made the matter must first be discussed at the next J.C.O.C. meeting.
 - b. Grievances related to the subjects of dispute referred to in Part 2 shall not be considered until after the parties have settled a subject or Arbitrator Stout has issued a ruling.
- 2.
 - a. Failing resolution after the discussion referred to above, either party may then refer the matter to Arbitrator Stout. He shall have the authority provided to him in his arbitration award of September 23, 2009.
 - b. No other general nature contracting out grievance shall proceed through the normal procedure provided in Article 13.
 - c. This includes general nature grievances concerning contracting out which allege that work that is not normally performed should be bargaining unit work under Article 1.02.10 because it is practicable especially during layoffs for the work to be performed by the bargaining unit.
 - d. Instead, such an allegation must be referred to the Company Co-Chair for the J.C.O.C. and placed upon the J.S.C. Agenda for discussion.
 - e. If the matter is not resolved, it may be referred by either party to Arbitrator Stout for his determination.
 - f. The parties specifically agree that Arbitrator Stout shall have sole discretion to determine the matter and no other process shall be applicable.

- g. He shall have the authority provided in his award of September 23, 2009. The allegation may not revert to the normal arbitration process.

PART 3

INFORMAL ARBITRATION

1. In consideration for the agreement above, the Company and the Union agree to appoint one person each to identify any outstanding individual or group grievances respecting claims for overtime only in contracting out cases after July 31, 2007.
2. The Union shall be responsible for presenting the facts necessary to justify the claim. The Union may request arguably relevant documents from the Company. The Company shall respond as it determines with any additional facts, which it chooses, and provide the requested documents unless it objects. Such objection shall be resolved by teleconference with Arbitrator Stout. The two representatives may resolve any claim by mutual agreement. Such agreement shall be binding on the parties and any grievor involved and the grievances involved shall be deemed to be settled.
3. If mutual agreement does not occur, either party may refer the matter to informal arbitration which shall be supervised by Arbitrator Stout or whomever he may designate from the list set out in paragraph 4. Also, Arbitrator Stout may assign an arbitrator, from the list set out in paragraph 4, to hear and determine a number of cases under informal arbitration or a single case under expedited arbitration as provided for in his October 22, 2008 award. Arbitrator Stout and / or his designate(s) or assigned arbitrator(s) may grant any interim orders to require that the process is followed and completed in an expedited manner. The parties agree that Arbitrator Stout and / or his designated or assigned arbitrators shall have jurisdiction to hear and determine the issues as if appointed under the Collective Agreement and or the *Labour Relations Act, 1995* as may be amended.
4. The following arbitrators may be designated or assigned by Arbitrator Stout, in his absolute discretion, for informal or expedited arbitration:
 - i. Jules Bloch
 - ii. Louisa Davie
 - iii. Jane Devlin
 - iv. Joe Carrier
 - v. Norm Jesin
 - vi. Gord Luborsky
 - vii. Paula Knopf

- viii. Steve Raymond
- ix. Dana Randall
- x. Brian Sheehan

5. All other outstanding general nature contracting out grievances filed up to and including September 23, 2009 are hereby withdrawn without prejudice to the resolution of the disputes which remain outstanding before Arbitrator Stout.
6. The presentations at informal arbitration shall be based on the facts exchanged by the two representatives and set out in a statement of issue(s) agreed upon by the parties. If the parties cannot agree to such a statement, then each party may submit its own statement of issue(s). Except with the permission of the Arbitrator, no presentation may total more than 30 minutes. Only bottom line decisions shall be issued. No decision may be used as a precedent or quoted in any other case. It shall not be reported except as required by the *Labour Relations Act, 1995* as may be amended.
7. If either representative identifies a grievance for which an expedited arbitration is more appropriate, that party may make an application to Arbitrator Stout for an expedited arbitration in accordance with the procedures set out in his award of October 22, 2008. Arbitrator Stout or his designate(s) or assigned arbitrator(s) also have the power to defer any matter(s) to the expedited arbitration process.
8. The parties may by mutual agreement request that the issue(s) be mediated. A scheduled arbitrator may, at her or his discretion, mediate the dispute at any time.
9. All decisions by arbitrators in the informal arbitration shall be final and binding upon the parties and the grievors and may not be the subject of any judicial review.
10. All other outstanding individual and group grievances respecting contracting out are hereby adjourned and deferred until all the cases referred to above are resolved. Then, the parties shall meet with Arbitrator Stout to determine its appropriate way to proceed with the individual cases, which remain outstanding.
11. The expenses of all arbitrations provided for in this Settlement shall be borne equally by the Company and the Union in accordance with Article 13.06.50 of the Collective Agreement.

PART 4
FUTURE INDIVIDUAL AND GROUP CONTRACTING
OUT GRIEVANCES

1. After November 1, 2009, if an individual or group grievance is filed respecting contracting out, the normal grievance procedure shall be followed until the referral to arbitration. At that point, the grievance shall be referred to the two representatives of the parties referred to above who shall follow the informal arbitration process.

PART 5 GRACE PERIOD

1. There shall be a grace period respecting the implementation of this Settlement until November 1, 2009, during which time contracting out grievances may be filed by either party. However, the time limits for step 2 meetings shall be extended by 21 days.

PART 6 HARRIS AND CRAVEN ARBITRATIONS

1. All matters presently before Arbitrator Harris and Craven are hereby settled without prejudice or precedent and the parties agree that the jurisdiction of those arbitrators is hereby terminated for all grievances referred to them up to and including the date of settlement.

PART 7

1. In partial consideration for the payment provided for below, the Union hereby withdraws grievance 04-123 dated April 2, 2004 respecting business unit co-chairs.
2. As partial consideration for the withdrawal of the grievances provided for above, the Company agrees to make a one-time payment to the Union of \$50,000.00 dollars.
3.
 - a. The parties agree that the role of the J.C.O.C. Co-Chair shall be very important to the efficient operation of this Settlement. The Co-Chair must have the demonstrated ability to research, analyze data, be knowledgeable in the activities of the Company and capable of succinctly stating the position of one's party and skilled in relationship building.
 - b. Each party shall be responsible, consistent with the above criteria, for the selection of its Co-Chair.
 - c. During the term of this Agreement, the Company will pay the normal salary and premium costs for benefits for the person who is appointed

Union Co-Chair in a manner consistent with the practice respecting other members of the Union executive provided it shall not pay the person more than one salary.

- d. Each quarter, or more often, if requested by either party, the Union President and the Company Vice-President of Human Resources, or their designates, shall meet to assess the performance of the Co-Chairs. If either party has complaints or issues about the conduct of either Co-Chair, which are unresolved after a meeting required above, that party may insist upon a prompt meeting or teleconference with Arbitrator Stout to address the matter.

PART 8

1. This Settlement shall expire on December 31, 2012, or such other date as the parties agree.
2. Arbitrator Stout shall remain seized of the terms of this Settlement to the extent necessary to implement and apply its terms.
3. This Settlement shall be issued as an Award of Arbitrator Stout.

DISPOSITION

I remain seized with respect to this matter in accordance with the parties' agreement.

Dated at Toronto, Ontario this 6th day of October 2009.



John Stout - Arbitrator