

IN THE MATTER OF AN ARBITRATION

BETWEEN:

B.C. TIMBER LTD.

AND:

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 1-71

ARBITRATOR:	CLIVE McKEE
FOR THE COMPANY:	KEVIN O'NEILL
FOR THE UNION:	ALEX MacDONALD, Q.C.
DATE OF HEARING:	AUGUST 4, 1983
DATE OF AWARD:	AUGUST 18, 1983
GRIEVOR:	K. BAL

A W A R D

At this arbitration held in Vancouver, B.C., on August 4, 1983, it was agreed that the Board was properly constituted and had jurisdiction to hear and rule on the matter in dispute.

The question before the Board is: .

" Did the Company violate the master agreement when the job of Truck Driver - Front End Loader Operator was denied to Mr. K. Bal on or about April 18, 1983? "

Witnesses were called, sworn and examined.

SUMMARY

The Grievor claims the right to bump another employee. The Company while agreeing that the Grievor is a competent Truck Driver, does not agree that the Grievor is competent as a Loading Operator or that he has ever worked for the Company in that job. The Grievor claims experience in that job. The Grievor claims experience in the loading function gained in other employment and on a few occasions on the Company's premises.

Held for the Company. Evidence did not establish that the Grievor could be considered a competent loading operator. The competence of an employee must be his "present" level of competence to perform a job into which he wishes to bump.

EVIDENCE

The Company closed down its operations in December 1982. In April 1983 it recalled two employees for yard clean-up purposes. The Grievor claims that he is senior to one of the employees and should have been recalled in his stead.

The Grievor's seniority dates from November 28, 1972, and the employee whom he wished to bump has a seniority date of September 25, 1974.

The category of job into which the Grievor desires to bump is Truck Driver/Front End Loader Operator.

The evidence is clear the Grievor has not previously held such a job while employed by the Company. The evidence is also clear that the Grievor has not been trained by the Company in these job functions.

The Grievor testified that he owned his own truck and that he drove it and loaded it for a contractor. He also testified that for a few hours he had driven Company equipment while performing the loading function.

It was clear from the evidence that the two employees recalled were basically unsupervised in the performance of their assignment. Their task was to clear debris out of the yard -- dirt, old and broken logs, etc. -- load this debris onto trucks, drive the loads off the Company's premises and dump the debris. On the return journey, they loaded the trucks with gravel from the Company's gravel pit.

DISCUSSION

1. At issue here once again is Article XXI - Seniority:

" Section 1: Principle

- (a) The Company recognizes the principle of seniority, competency considered. In the application of seniority, it shall be determined first by department and second by plant seniority.

...

Section 2: Reduction & Recall of Forces

- (a) (i) In the event of a reduction of the forces, the last person hired shall be the first released subject to the competency of the person involved and the provisions of Section 1. Where a reduction of forces is caused by emergency conditions the application of plant seniority may be postponed for such period as may be necessary but not exceeding five (5) working days. If the Company decides to exercise its right under this provision it shall notify the Shop Committee as soon as possible.
- (ii) When recalling forces after a period of layoff following a reduction of forces, an employee shall be recalled in order of his plant seniority subject to the competency of the person involved and the provisions of Section 1.
- (b) During a reduction of forces where an employee's seniority is such that he will not be able to keep his regular job he may elect to apply his seniority to obtain a job paying a higher rate if he has previously held the job in the operation on a regular basis.
- (c) During a reduction of forces where an employee's seniority is such that he will not be able to keep his regular job he may elect whether or not to apply his seniority to obtain a lower paid job or a job paying the same rate of pay or accept a layoff until his regular job becomes available, provided however:
- / /

" (i) If during the layoff period the employee wishes to return to work and so notifies the Company, he shall be called back to work as soon as his seniority entitles him to a job.

(ii) The application of this provision shall not result in an employee, in the exercise of his rights, bumping an employee with less seniority.

(d) Details of the application of this Section shall be worked out by the Local Union and the Company. "

2. As I have previously said in MacMillan Bloedel Limited (New Westminster Division) and IWA, Local 1-357, award dated April 6, 1983:

" Seniority for any employee is of paramount importance in the workplace. It is the first and last line of defence of his employment status. His ability to achieve and gain promotion over his fellow workers and his ability to continue to work in the face of layoff is dependent upon his seniority.

Seniority and the rights flowing from it is a very personal matter.

The Coast Master Agreement has very detailed language in regard to seniority and the rights and protections flowing to an employee by the exercise of his/her seniority.

The employers recognize 'the principle of seniority, competency considered'. In reading that language, I take it that two very important statements are being made:

- (a) the long service of an employee is respected and honoured when needed, provided that
- (b) a company does not have to accept a lower than normal standard of performance in any job into which an employee may desire to bump.

" A company faced with a reduction of forces has two responsibilities:

- (a) to permit the employees affected the exercise of their seniority as foreseen in the collective agreement, and
- (b) to maintain a standard of production so that the company continues to exist until its business is once again profitable and the workforce can return, and/or to maintain and safeguard the premises so that when it is in a position to recommence production, the facilities are ready and available.

I read the Coast Master Agreement to show that the parties have studied the question of the reduction of forces both practically and theoretically and have made provision for controlled order at the time of any layoff. At such time, it is important that the parties have a complete understanding of the actions to be taken and the employees understand what is to happen to them. Without such pre-consideration, layoffs done in a haphazard manner could cause immediate and long-term chaos in the workplace.

While the Coast Master Agreement honours seniority, an employee's competency is also to be considered when bumping into another job. I take 'competency' to mean in plain English 'to be suitable, answering all the requirements, fit, adequate'. Quite clearly, the assessment of an employee's exercise of bumping rights should be made on whether or not he was suitable and fit for the job and answered all requirements.

An important part of this assessment is, however, when should an employee be able to 'answer all requirements'; when is he or she considered competent? "

3. The language of Article XXI - Seniority obviously protects the interests of the employee from errors by the employer and from erroneous claims by fellow employees, at a time of instability in the workplace.

In my opinion, the language also protects an employer from even greater instability, one might use the work "chaos", at the time of layoff -- the unrestricted bumping by untrained senior employees of trained junior employees. To prevent such chaos, the language of the collective agreement provides that seniority rights may only be exercised by an employee if he/she is not only senior to the employee to be bumped but is also judged competent to perform the job.

A layoff clearly is not a time for "testing" employees or giving them a chance to show what they can do in order that they may then exercise their seniority to bump other competent employees.

At the time of layoff, employees must be able to move to other jobs and immediately have a "hands on" knowledge of the requirements of the new job. It surely cannot be expected that a company has to accept a less than competent standard of performance from an employee bumping into a job just because he is more senior than the employee to be bumped.

The capabilities of each employee to perform other functions should be "officially" known to the Company and be on the

employee's record. Such information should not be passed to a foreman or a supervisor in general chit chat over a cup of coffee, as it is claimed was done in this instance. To withhold such information is not in the interests of an employee or of a company. A company is responsible for adhering to the collective agreement in judging the question of competency at the time of a layoff and the attempted exercise of bumping rights and should be given all the necessary information in order to accurately judge competency.

4. In this instance the Grievor claims competency. The Company states that it has no knowledge of the Grievor's competency in the loading function. The Company is aware and takes no issue with the fact that the Grievor can drive a truck.

The Company states that the Grievor has never performed the function of loader while in its employ. The Grievor claims that for a total time of approximately 10 or 11 hours, he has performed loading functions on various pieces of equipment. The Company witnesses in some measure appeared to be surprised by these claims.

The Company has a training program. The Grievor has not participated in that program. The Production Superintendent, with many years of experience in handling and teaching others how to handle this heavy equipment, stated that 120 hours of

training is the minimum needed. He testified that it is rare for anyone to handle such equipment competently in a shorter period and that it is not unusual for some employees to need many more hours in training.

5. It is clear from the evidence that the equipment used is large equipment such as Caterpillar 966's and 980's, heavy and expensive. Lack of competency in the handling of such equipment could do serious damage to Company property. More importantly, lack of competency in handling this equipment could cause loss of life or severe injury for the employee operating the equipment and/or others working nearby.

FINDING

After consideration and examination of the evidence, arguments and submissions, I find that:

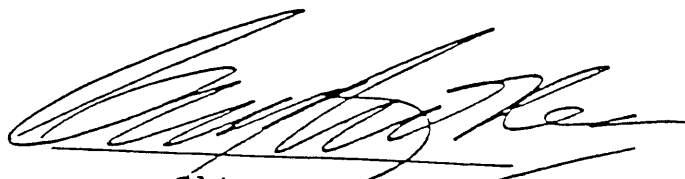
1. It is the responsibility of the Company to judge competency and assign employees in accordance with the collective agreement. Such judgment, usually, can only be based on knowledge the Company has of the previous work performance of an employee in a job on the Company's premises.
2. The assessment of an employee's competency must be made at the time of bumping, i.e. the "present ability" of the employee and not after a training or trial period.

3. The language of the Coast Master Agreement can only be read to mean that the parties desire and require an orderly layoff. Nowhere, in my opinion, can it be read to indicate that at the time of a layoff a company must undertake to train employees in other job duties in order to make them competent so that they may then use their seniority to bump other employees or that they be given a chance "to show what they can do".

To assume that a company must train employees at the time of layoff in order to make them competent would be unreasonable both for the company and other employees and could lead to chaos in the workplace.

4. I can find no violation of the collective agreement by the Company and the question is answered in the negative.

SIGNED this 18th day of August, 1983.



Clive McKee