BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GENERAL TEAMSTERS UNION, LOCAL 662	
and	Case 40 No. 41827 A-4408
COCA-COLA BOTTLING COMPANY	

Appearances:
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. William S. Kowalski, appearing on behalf of the Union.
Carroll, Parroni, Postelwaite, Anderson & Graham, S.C., Attorneys at Law, by Mr. Jack A. Postlewaite, appearing on behalf of the Company.

ARBITRATION AWARD

Teamsters Union Local No. 662, hereinafter referred to as the Union, and Coca-Cola Bottling Company of Central Wisconsin, Inc., hereinafter referred to as the Company, are parties to a collective bargaining agreement which provides for the binding arbitration of disputes arising thereunder. The parties jointly requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance involving the meaning and application of the terms of the agreement. The undersigned was so designated. A hearing was held in Eau Claire, Wisconsin on April 6, 1989. The hearing was not transcribed and the parties filed briefs and the Company filed a reply brief which was received on May 9, 1989, at which time the record was closed.

BACKGROUND

The grievant began his emloyment with the Company in May, 1975 and was working as a warehouseman in November, 1988. In November, 1988, the Company eliminated the grievant's position as well as other warehousemen positions. The Company created "reload driver" positions and the grievant and others were given the opportunity to qualify for these positions. The grievant failed to obtain the necessary licensing to qualify for the reload driver position and was laid-off in November, 1988. Other warehousemen qualified for the reload driver positions. These warehousemen had less seniority than the grievant. Subsequent to his layoff, the grievant on his own time and at his own expense attended Chippewa Valey Technical College and in January, 1989, obtained the necessary licensing to become a reload driver. The grievant then requested that the Company lay off a less senior reload driver and reinstate the grievant to that position. The Company refused and the grievant filed a grievance which is the subject of the instant arbitration.

ISSUE

The parties stipulated to the following:

Did the Company violate the collective bargaining agreement by failing to recall the grievant from layoff in January, 1989?

If so, what is the remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE I.

DEFINITIONS AND RELATIONSHIPS

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1.8 Loss of License or regulatory Approval. In the event an Employee should lose his drivers license or fail to be approved by any regulatory body having jurisdiction over the Employee or Employer's business and the loss of such license or regulatory approval should directly effect the Employee's ability to perform the work for which he is employed by Employer, then in that event, Employer may, at its option, place such Employee on leave of absence without pay or benefits until Employee regains his license or approval. If other work is available that Employee is capable of handling, Employer at its option will make all reasonable attempts to continue said Employee if possible and needed and if cause for Employe's loss of license or regulatory approval was not in violation of other provisions of this contract.

. . .

ARTICLE VIII

SENIORITY

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8.2 Lay-Offs and Re-Hiring. In case the Employer reduces his force, the last Employee hired in the seniority list affected shall be the first layed off and when increasing the force, the last man layed off in such list shall be the first re-hired. There shall not be seniority rights between the two lists for lay-off and re-hiring purposes. The foregoing shall apply only as between Employees who in the judgment of the Company are equally qualified and dependable. Recall to work shall be by certified mail, return receipt requested, to Employee's last known address. The Employee must respond to work in seven days after receipt of notice unless otherwise mutually agreed to. If the Employee fails to comply with the above, he shall lose all seniority rights under this agreement. Seniority shall not function between plants of the Employer, except that in the event interplant transfers between seniority lists, the Company's seniority shall prevail on all applicable matters under this contract, except lay-off and recall, which shall be governed by the seniority list to which such lay-off or recall is involved. However, in the event of lay-off or discontinuance in one of Employer's plants, seniority of such members affected thereby shall be considered for hiring purposes in any plant of Employer continuing in operation.

8.3 Notice of Job Openings. Employer agrees to post for a period of not less than five days on the Company bulletin board, all openings arising in the above Bargaining Unit of the Company. Present Employees of the Bargaining Unit interested in applying for such jobs shall so indicate to the Employer, and the Employer agrees to give reasonable consideration to filling such positions with those Employees having seniority within their unit and qualified to perform the position. However, it is understood that the Employer reserves to itself, management prerogative in filling such positions.

Union's Position

The Union contends that the Company violated Section 1.8 of the agreement when it failed to recall the grievant as a reload driver in January, 1989 after he received his license. It points out that under Section 1.8, the grievant "failed to be approved" by a regulatory body having jurisdiction over the Company's business, this failure directly affected the grievant's ability to perform work for the Company, the grievant has gained approval by that regulatory body and must now be recalled by the Company. The Union submits that the Company's position that Section 1.8 does not apply because the grievant was not a reload driver at the time he failed to gain regulatory approval is without merit for two reasons:

1. The grievant's situation is not governed solely by the layoff and recall provisions because the grievant was offered a new position and hence Section 1.8 is applicable. The grievant could have continued working if he had gained approval and his initial failure clearly affected his ability to continue working for the Company.

2. The Company's interpretation of Section 1.8 is so narrow as to lead to an absurd and anomalous result, namely, if the grievant is recalled, he will be a senior reload driver and if a work shortage occurs, the less senior reload driver will then be laid-off, an absurd situation. It claims that the seniority, layoff and recall provisions reflect an intent that qualified senior employes should be given the right to perform work before junior employes.

The Union requests the grievance be sustained and the grievant be awarded back pay to the time he should have been recalled in January, 1989.

Company's Position

The Company contends that Section 1.8 is not applicable to the grievant's situation. It maintains that Section 1.8 covers employes who are drivers for the Company who lose their necessary licenses and are provided a remedy other than immediate discharge. It argues that the grievant was a warehouseman at the time of layoff and the license requirement was to obtain a new position with the Company. It points out that the grievant was not placed on a leave of absence but was laid-off indicating that Section 1.8 was not applicable. The Company insists that Section 8.2 is applicable and at the time of his layoff, the grievant was considered for a reload driver position for which he did not qualify and was laid-off. It submits that the agreement does not authorize bumping on the basis of seniority and nothing in that section permits the grievant to be taken off layoff status to replace a current employe. The Company further maintains that Section 8.3 reserves to the Company the prerogative to fill positions and seniority does not control selection but is only one of several criteria used. The Company concludes that the grievant has no bumping rights and should remain in layoff status until such time as a position opens for which he is qualified.

DISCUSSION

The undersigned concludes that Section 1.8 of the parties' collective bargaining agreement is not applicable to the instant dispute. A reading of Section 1.8 in its entirety convinces the undersigned that it is the loss of the license or regulatory approval, after once having it, that the parties intended Section 1.8 to apply to, rather than the mere failure to be approved by a regulatory body. The first sentence of Section 1.8 refers to "fail to be approved" and loss of such "regulatory approval." The second sentence refers to "regain" his license or approval and the last sentence also refers to loss of license or regulatory approval. Even the headnote refers to loss of license or regulatory approval. It appears that the Company's assertion that this section is to benefit those employes who have a license or regulatory approval for a job and then lose it, do not also lose their jobs but are given a leave of absence until the license or approval is regained. This does not apply to the grievant as he never had regulatory approval. The grievant was a warehouseman and never qualified for a reload driver position so he remained a warehouseman and the failure to get approval never affected his ability to perform the work for which he was employed, namely warehouseman. Thus, the language of Section 1.8 is not applicable to the grievant's situation.

The situation is akin to the case of a vacancy in the position of reload driver which is posted and for which the grievant and others apply. The grievant fails to pass the licensing requirement and a junior employe is awarded the position. Later, the grievant does pass the licensing requirement. The grievant could not then bump the junior employe because Section 1.8 does not provide for this circumstance nor does Section 8.3.

The fact that the grievant was laid off from his warehouseman position does not change the result. At the time of his layoff, the grievant was not qualified to be a reload driver, and was a warehouseman. Section 1.8 anticipates that the employe will regain his license or approval. Section 1.8 does not contemplate the instant case. The grievant may never have gotten qualified or may have been qualified a year-and-a-half later but there was no expectation that he would be qualified such that a position would be held open for him. In short, nothing in Section 1.8 applies to the grievant's situation. The Union's argument that this leads to an absurd result is not persuasive because if the grievant is recalled, it would be because he is qualified to do the job. If the grievant is recalled and should a future layoff of a driver be required, it might be a junior qualified employe who is now employed. The grievant would be retained on the basis of seniority but that is because the grievant would be qualified at the time of the layoff, a different situation than the instant case.

The grievant is to be commended for his initiative in attending school on his own and at his own expense and the undersigned hopes that the grievant can be recalled by the Company to a vacancy in the immediate future. However, the

undersigned can find no provision in the agreement that requires the Company to reinstate the grievant to a position held by a junior employe where the grievant was not qualified to fill the position at the time the junior employe filled it. Consequently, the grievance must be denied.

Based on the above and foregoing, the record as a whole and the agreements of the parties, the undersigned issues the following

AWARD

The Company did not violate the collective bargaining agreement by failing to recall the grievant from layoff in January, 1989, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 16th day of May, 1989.

By _____
Lionel L. Crowley, Arbitrator

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