

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
SUB-ZERO FREEZER COMPANY, INC. :  
and : Case 50  
: No. 41640  
LOCAL UNION 565, SHEET METAL : A-4399  
WORKERS' INTERNATIONAL :  
ASSOCIATION, AFL-CIO :  
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Appearances:

Mr. Paul Lund, Business Manager and Financial Secretary Treasurer, for the Union.  
Mr. Donald D. Emerich, Personnel Director, for the Company.

ARBITRATION AWARD

Pursuant to the terms of their 1988-1990 bargaining agreement, the undersigned was designated by the Wisconsin Employment Relations Commission as arbitrator to resolve a compensation grievance. Hearing was held in Madison, Wisconsin on March 14, 1989. No transcript of the hearing was taken and the parties submitted written argument, the last of which was received on April 11, 1989.

ISSUE:

The parties were unable to agree upon a statement of the issue to be resolved through this Award but empowered the undersigned to frame the issue after considering the respective positions of the parties. Consistent with that understanding, the undersigned frames the issue as follows:

Did the Company violate Article XIV, Section 1 B. (b) of the contract by denying the grievant's shift preference request and, if so, what remedy is appropriate?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE XIV

SENIORITY

Section 1.

B.

(b) The most senior employee in the Bargaining Unit shall have shift preference based upon seniority within their classification and job.

POSITIONS OF THE PARTIES:

The Union

The Union asserts that the Company violated Article XIV, Section 1 B. (b) of the parties' contract by denying the grievant's request to exercise shift preference rights over a less senior employe. The Union argues that where, as here, the less senior employe the grievant wished to bump holds the same classification and job as the grievant, Article XIV, Section 1 B. (b) requires the Company to grant his request for a change in shift. The Union contends that if the Company wishes to impose the additional condition of both employes being able to satisfactorily perform on their new shifts, then the Company should seek to acquire contractual language to that effect at the bargaining table.

The Union alleges that there is no past practice to support the Company's position that the employes' qualifications are relevant to the exercise of shift preference rights. If it is determined that qualifications may be relevant, the Union urges that the less senior employe had sufficient experience to perform the grievant's work on the third shift. The Union asserts the Company's willingness to assign overtime to the less senior employe in circumstances where he would be working alone is supportive of its position in this regard.

Lastly, the Union notes that the Company's denial of the grievant's shift preference request has created substantial personal inconvenience for the grievant in his family life and made it difficult for him to take advantage of Company sponsored training opportunities which would produce a wage increase.

Given the foregoing, the Union ask that the grievance be sustained and that the grievant receive the training pay increase.

#### The Company

The Company contends that it properly delayed approval of the grievant's shift bump request because at the time of the grievant's request, the less senior employe was not capable of satisfactorily performing the job alone on the third shift. The Company urges the Arbitrator to conclude that it is inherent in Article XIV, Section 1 B. (b) that both employes involved in a shift bump must be able to perform the job satisfactorily on their new shift. The Company contends the record clearly establishes that the less senior employe has not yet acquired enough experience to work without back-up from other employes or supervisors. The Company asserts that both employe safety and production would be placed in jeopardy if untrained employes can be bumped to shifts where they work alone.

The Company denies that its overtime assignments support a conclusion that the less senior employe is in fact qualified to work alone or that it has punished the grievant for filing the instant grievance. The Company further argues that the grievant's shift bump request was primarily motivated by personal concerns and not by his desire to participate in the Company training program. Thus, the Company asserts that any remedy should not include training pay.

Given the foregoing, the Company asks that the grievance be dismissed.

#### DISCUSSION:

The record satisfies the undersigned that when the Company denied the grievant's December 1988 shift bump request, it was acting upon a reasonable good faith belief that placement of the less senior employe in the third shift Maintenance Assistant position could jeopardize both production and employe safety. The inference of competency which the Union asks that I draw from evidence of the occasional overtime assignments the less senior employe successfully handled is not strong enough to overcome the credible testimony of Supervisor Schmitt that the less senior employe had not yet acquired enough training and experience to work alone. However, the question remains whether under Article XIV, Section 1 B. (b) the Company can deny a shift bump on the basis of its production and safety concerns.

As the Union points out, no such restriction on shift bump rights is explicitly stated in Article XIV, Section 1 B. (b). The fact that such a restriction is stated in the job posting provisions of Article XIV, Section 6 only serves to create an inference that the parties did not intend such a restriction to be present in Article XIV, Section 1 B. (b). However, it is also clear that it would be unreasonable to conclude that the parties intended the exercise of shift bump rights to create situations in which employe safety could be jeopardized. As it is a basic rule of contractual interpretation that unreasonable constructions of language are to be avoided, the undersigned is persuaded, on balance, that the Company's actions herein fall within the intent of Article XIV, Section 1 B. (b).

However, it should be emphasized that this exception to the broad rights granted to employes under Article XIV, Section 1 B. (b) is a very narrow one.

It should also be noted that the passage of time between the December 1988 denial of the grievant's request and the issuance of this Award has almost inevitably provided the less senior employe with additional experience and training sufficient to eliminate the Company's concerns.

Given the foregoing, it is my

AWARD

That the grievance is dismissed.

Dated at Madison, Wisconsin this 10th day of July, 1989.

By \_\_\_\_\_  
Peter G. Davis, Arbitrator