

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 GENERAL DRIVERS AND HELPERS UNION, :  
 LOCAL 662 :  
 :  
 and : Case 13  
 : No. 42104  
 : A-4429  
 RALSTON PURINA COMPANY :  
 (DAIRY FOOD SYSTEMS, INC.) :  
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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. William S. Kowalski, appearing on behalf of the Union.  
 Davis, Birnbaum, Joanis, Marcou & Colgan, Attorneys at Law, by Mr. James G. Birnbaum, appearing on behalf of the Company.

ARBITRATION AWARD

The Company and Union above are parties to a 1986-89 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the bumping grievance of Tom Bayer.

The undersigned was appointed and held a hearing on November 3, 1989 in Red Wing, Minnesota, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on April 10, 1990.

STIPULATED ISSUES

1. Did the Company violate the collective bargaining agreement when it denied the Grievant's request to bump production forklift driver Bill Brookshaw?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 4

Seniority

4.01 Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto, unless it is specifically noted otherwise in any Article or Section. For determination of seniority rights, the rule shall be that the oldest employee in respect to employment with the Employer in the bargaining unit is the senior employee and has seniority over anyone junior who is hired later in the bargaining unit. This shall continue on down the seniority list with the above interpretation. Therefore, any place in this Agreement that seniority is mentioned, unless qualified, shall mean the oldest employee of the Employer in respect to length of employment with the Employer in the bargaining unit. Where no specific mention is made of seniority or any qualification, seniority shall prevail with the above ruling. It is also understood that should any employee leave the bargaining unit for any reason other than that which is granted in this Agreement, the employee shall lose all seniority accumulated to date. Seniority is a period of continuous employment of employees by the Employer in the bargaining unit, commencing with the first hour and date of work and including time for vacations, leave of absence, temporary layoff due to lack of work, military service as prescribed by law, illness, accident or other mutual agreement. Should two (2) or more employees be employed at the same date and hour, then seniority shall be determined by arranging said employees or group of employees in alphabetical order on the seniority list, starting with the last name and then the first name.

. . .

4.04 When a layoff is necessary or jobs are abolished, affected

employees with least seniority shall be laid off first provided those employees retained are capable of carrying on operations without additional training. An employee so affected by the above may exercise seniority to any job the employee can perform without additional training. When employees are called back to work, those employees having the greatest seniority shall be recalled first, providing they, together with those on the job, are capable of carrying on the plant's usual operations without additional training.

#### FACTS

The Company's Dairy Food Systems subsidiary maintains three plants in Hager City, Wisconsin and nearby in Red Wing, Minnesota, all of which are covered by a common collective bargaining agreement and seniority list. Grievant Tom Bayer had worked for the Company for 19 years when, in January, 1989, his job at one of the facilities, the "Schroeder" warehouse, was eliminated. Bayer was classified as general laborer, but spent most of his time driving a forklift, and there is no dispute that he was eligible to bump a forklift driver. Bayer signed a bumping sheet identifying that he wished to bump Bill Brookshaw, a forklift driver at the Company's Red Wing warehouse. Bayer testified that when he turned the form in to Supervisor Cal Wilhaus, Wilhaus told him he could not bump Brookshaw because Brookshaw was a lead man. Wilhaus offered to talk to the employees at Red Wing to find out if the other forklift driver there, Larry Hines, wished to move to a new location, in which case Bayer could move to Red Wing. Wilhaus (who in his testimony denied that he had made any reference to Brookshaw being a lead man) had Bayer fill out a second bumping sheet identifying only that Bayer wanted to bump into "production forklift (warehouse) on the first shift." The Company subsequently allowed Bayer to bump the least senior production forklift driver, named Dougherty, but continued to contend that Bayer could not bump into his preferred location, i.e., Red Wing.

Three Union witnesses testified that in the past they had been able to bump particular individuals in similar circumstances. Dick Gernentz testified that on one occasion, about 1985, he bumped into the blending mill as a general laborer, and was allowed to bump on either the pack line or dump line at his choice. Gernentz testified that the employee he bumped was not the least senior, and that there was then a chain reaction of subsequent bumps. Gernentz admitted, however, that he could not recall the name of the employee he had displaced. Arnold Brorson testified that he bumped a general laborer on one (undated) occasion, and that the person he bumped was not the most junior; but Brorson also could not recall the name of the person he bumped. And Laverne White testified that he had bumped particular individuals twice, the first time when he was bumped by Dougherty in January or February, 1989, during the course of the events which led to this grievance. White testified that he bumped a general laborer on that occasion, but did not specify the name of the person involved, though he testified that he was allowed to pick which individual to bump. White also testified that approximately a year and a half earlier he had been bumped from his job, and had bumped in turn forklift driver Ron Peterson. White testified that Peterson was not then the least senior forklift driver.

Supervisor Cal Wilhaus testified concerning each of the incidents raised by the Union witnesses. As noted above, Wilhaus denied that he had made any reference to Brookshaw's status as lead man; in other respects, his testimony as to the bumping which led to this grievance is consistent with Bayer's. With respect to Gernentz's testimony, Wilhaus testified that Gernentz did not bump a particular employee, and his testimony was the same with respect to Brorson's bump. In both instances, Wilhaus testified, the bumping was the result of a job bid, not a layoff or job elimination. With respect to White, Wilhaus testified that White's displacement of Ron Peterson as forklift driver was not the result of an "individual" bump, because Peterson was then the only employee in the classification that White bumped into. As to the other White incident, Wilhaus testified that when Dougherty bumped White, White bumped into the classification of laborer in blending. Wilhaus also offered testimony that in 1988 Bill Brookshaw had bumped White because Brookshaw bumped into "production forklift warehouse" in which White was the least senior employee.

The record also contains testimony of an inconclusive nature concerning several other bumping incidents.

Wilhaus testified that the bumping bid form has been used since approximately late 1981 or early 1982 when he started to handle personnel movements in the plant. The text of the form reads as follows:

"I \_\_\_\_\_, am exercising my seniority for \_\_\_\_\_ (job classification) \_\_\_\_\_ shift."

Wilhaus testified that this format had been used consistently and that he had rejected any forms in which an employee sought to name a particular individual or location rather than a job classification.

Betty Jane Okenfuss, the Company's Senior Labor Counsel, testified that

in her ten-year representation of the Company at this subsidiary she was unaware of any instance in which an employe had been allowed to bump a particular individual or particular duties. Okenfuss testified that in the 1989 negotiations the Union made a proposal to modify Article 4.04 of the contract, and that when she asked the Union to explain the proposal the Union representatives present explained that the purpose was to enable an employe to pick which job the employe could bump into, referring specifically to the Bayer situation. Okenfuss testified that when the Union subsequently withdrew this proposal, no modification was made to the agreement.

In a 1981 award, Arbitrator David Shaw found that the Company was not permitted to insulate lead men from bumping, on the ground that the Company retained the right to reassign the lead man designation if the person holding the underlying job was bumped in accordance with seniority. There is no dispute that Brookshaw was not the least senior production forklift driver at the time the Grievant sought to bump him.

#### THE UNION'S POSITION

The Union contends that when the Grievant's position was eliminated, the Grievant attempted to bump Larry Hines 1/ at the Red Wing warehouse, and that although "Hines" was junior to the Grievant, the Company contended that the Grievant could not bump an individual but only into a classification. The Union argues that the language in Article 4.04 that an employe may exercise his seniority to bump "to any job" is broader language than if the word "classification" had been used. The Union contends that "job" means the particular functions performed by a particular individual, and that Arbitrator Taylor so found in Shell Oil Co. 2/ The Union further argues that the parties' past practice testified to by three Union witnesses showed that employes had in the past been allowed to bump into a particular "job" within a classification.

#### THE COMPANY'S POSITION

The Company contends that the language of Article 4.04 makes no reference to job location, and that there are no separate classifications for each work

site. The Company contends that the bid form used by the Company for a number of years clearly identifies "classification" as the subject of a bumping bid and argues that had job location been allowed as a specific bumping demand it would have been reflected in that document. The Company also argues that the past practice does not exist in the terms argued for by the Union, and that in each case where testimony was received, it was vague and unsubstantiated. The Company further contends that the bargaining history of the Union's attempt to change the contract language in 1989 demonstrates that the language as it exists does not favor the Union's proposed interpretation.

#### DISCUSSION

I find the language of Article 4.04 on its face to be ambiguous. In stating that "an employe so affected by the above may exercise seniority to any job the employe can perform without additional training" the clause fails to identify whether "job" means the same as the Company would have it, i.e., classification, or means the same as the Union would have it, i.e., position held by a specified individual. On its face the word "job" will support either interpretation, and it is commonly used in both senses. Nor do I find the Union's citation of Shell Oil Co. persuasive. The contract clause in that case stated in pertinent part as follows:

"The Company endorses the principle of giving employes within a particular classification their preference, in accordance with their departmental seniority, in future permanent assignments . . ."

That language clearly incorporates the concept of specific job assignment by seniority, which the Union would have me read in Article 4.04 herein.

I must therefore turn to the standards customarily used for determining the meaning of ambiguous language. With respect to the evidence of past practice, I note that each of the Union witnesses was less specific, in asserting that he had made a previous bump of a particular individual who was not the least senior in the classification, than was Wilhaus in denying those assertions. Gernentz and Brorson could not remember the names of the employes

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1/ This is clearly a misprint in the brief. The testimony established that it was Brookshaw that the Grievant tried to bump, and that Hines' involvement in this matter is solely in the context that Wilhaus offered to check whether Hines was willing to move to a different location, which would have opened a Red Wing slot for the Grievant. Also, the seniority list shows Hines as senior to the Grievant.

2/ 80 L.A. 1211.

involved at all, and White remembered only one of the names. Wilhaus' testimony as to the same incidents demonstrated a better grasp of the details, and appears more reliable. With respect to the one incident in which White recalled the name of the employe (Peterson), Wilhaus testified that Peterson was the sole employe in the classification bumped into; the Union did not rebut this testimony. While the Grievant may well be credible in his testimony that Wilhaus referred to Brookshaw's lead man status in denying the request, I do not find that this controls the outcome, because Brookshaw was not the least senior employe in the classification.

As to the bargaining history I also find the Company's position more persuasive. While it would certainly be possible for a party to propose contract language modifications merely in order to clear up a bone of contention which might have gone that party's way in a hearing, that is not the usual interpretation of such a proposal, and in this instance the Union did not rebut Okenfuss' testimony to the effect that no such representation was made during the bargaining.

Finally, there is the matter of the actual form in use, which clearly implies on its face that "classification" rather than "specific assignment" was what "job" was expected to mean. Wilhaus' testimony that this form had been in continuous and unchallenged use for some 9 years was not rebutted by the Union.

Accordingly, I conclude that the Company's evidence is more persuasive both as to bargaining history and past practice than the Union's, and that while the underlying language is ambiguous, the surrounding circumstances indicate that in Article 4.04 the use of the term "job" does mean the employe classification.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Company did not violate the collective bargaining agreement when it denied Tom Bayer's request to bump production forklift driver Bill Brookshaw.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 21st day of June, 1990.

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator