

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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TEAMSTERS LOCAL UNION NO. 43 :  
 :  
and : Case 15  
 : No. 44101  
 : A-4643  
MODERN BUILDING MATERIALS, INC. :  
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Appearances:

Mr. Charles G. Schwanke, President, Teamsters Local Union No. 43,  
appearing on behalf of the Union.

Mr. Bill Fassbender, Representative, appearing on behalf of the Employer.

ARBITRATION AWARD

Teamsters Local Union No. 43, hereinafter referred to as the Union, and Modern Building Materials, Inc., hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the final and 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 over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Kenosha, Wisconsin on August 7, 1990. The hearing was not transcribed and the parties orally stated their respective positions at the conclusion of the presentation of the evidence.

BACKGROUND

The basic facts underlying the grievance are not in dispute. On May 9, 1990, the Employer called employes, including the grievant, to come into work on May 10, 1990. Ruben Castanuela, the Union steward, was present when the supervisor was calling. Castanuela told the supervisor that Union stewards have superseniority and he, Castanuela, should be called in before the grievant, even though the grievant had more seniority. The supervisor asked Castanuela about his claim of superseniority status and Castanuela told the supervisor that the business agent said he had superseniority. The supervisor believed Castanuela and called the grievant and told him not to report on May 10, 1990. Castanuela worked for four hours on May 10, 1990. The Employer later checked with the business agent, who informed the Employer that stewards have no superseniority. The grievant filed the instant grievance on May 16, 1990. Castanuela is no longer a Union steward.

ISSUE

The parties stipulated to the following:

Did the Company violate the Seniority clause, Article 12, on page 4 of the agreement?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 12. SENIORITY

For the purpose of this Article, "Seniority" of an employee shall be defined as his continuous service with the Company from the first day worked until termination.

The Company and the Union agree that where qualifications and ability to perform work are equal overall, seniority shall prevail. In case of lay-offs or reduction in force. The last man hired within the bargaining unit shall be the first laid off unless he possesses qualifications and abilities to perform work not possessed by a senior employee. In such cases then the junior employee shall be retained and the next man in seniority shall be laid off. In recalls the same procedure in reverse order shall prevail except that the Company shall not be required to recall a laid off employee when the work for which he would be recalled is not expected to last for one (1) week or more. Whenever possible, seniority shall prevail for Saturday, Sunday and holiday work.

UNION'S POSITION

The Union submits that the language of the agreement is clear that the senior employe is entitled to work where the qualifications and ability are

equal overall. It asserts that the Union steward did not have any special skills that the senior employe did not have and the senior employe should have been assigned the work. The Union points out that nothing in the agreement provides that a steward has superseniority and when the Employer checked with the business agent, he immediately confirmed this. The Union contends that the Employer is familiar with the contract and should know it does not grant stewards superseniority. It concludes that the Employer violated the clear terms of the contract and the grievant should be reimbursed for the lost wages.

#### EMPLOYER'S POSITION

The Employer contends that it was told by Union Steward Castanuela that he had superseniority and they believed him and assigned the work to him. It notes that this never came up before and other factors, such as no fee deduction for stewards, are practiced and are not specified in the contract. It argues that the Union steward induced the Employer to assign him the work, and the Union should not now assert the Employer violated the agreement.

#### DISCUSSION

First, it should be noted that the instant case illustrates how a good Union-Employer relationship can be destroyed. It is highly desirable for the Employer and the Union to have good lines of communication with respect to the interpretation of the agreement to head off any potential grievances. Here, it would appear that the communication between Union Steward Castanuela and the Employer generated the grievant's grievance. Castanuela may have honestly believed he had superseniority, and if he did not, then his conduct betrayed his position as Union steward in that he would have used his position as steward for personal gain and used his status to induce the Employer to violate the contract. Castanuela did not testify so it must be assumed that he honestly believed he had superseniority. Even so, Castanuela was asserting an erroneous position to the Employer and if the Employer reasonably believed Castanuela, then it would seem that the Union, through its agent, was just as liable for the contractual violation as the Employer, as it relied on Castanuela to its detriment, and the Union would be estopped from asserting a violation. The grievant in this case is an innocent party and should have been given the four hours of work and would have been but for the conduct of Castanuela. In such a case, equity may require that the Union reimburse the grievant for the lost hours.

Therefore, the issue in this case is whether the Employer's belief in Castanuela's assertion was reasonable. The undersigned concludes that it was not. Article 12 of the agreement provides that seniority shall prevail in this situation. The agreement is silent on superseniority and when Castanuela asserted superseniority, he was challenged by the Employer. Thus, it is concluded that the Employer was well aware of the terms of the contract and knew it was silent on superseniority. Castanuela told the Employer to check with the business agent who he claimed had told him he had superseniority. The Employer checked after the work was done and the business agent indicated that stewards have no superseniority. There was no explanation as to why the Employer did not check with the business agent before the work was done and had it done so, the grievance would have been avoided. Under the circumstances, the Employer did not act reasonably. The undersigned's authority is limited to an interpretation of the articles of the agreement. Article 12 provides that seniority will control and the grievant should have been called in to perform the work on May 10, 1990. The grievant was not called in and the provision was violated. Therefore, the Employer must pay the grievant the four (4) hours worked by Castanuela. This result probably is a bitter pill for the Employer to swallow given Castanuela's conduct, but the undersigned finds no authority under the agreement to order a different remedy.

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

#### AWARD

The Employer violated the seniority clause, Article 12, page 4, of the agreement when it failed to assign the grievant to work four (4) hours on May 10, 1990, and, therefore, the Employer is directed to make the grievant whole for these four (4) hours.

Dated at Madison, Wisconsin this 20th day of August, 1990.

By \_\_\_\_\_  
Lionel L. Crowley, Arbitrator