

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration      :
of a Dispute Between                  :      Case 24
:                                      :      No. 46955
DUO-SAFETY LADDER CORPORATION         :      A-4881
:
:                                      :      Case 25
and                                    :      No. 47334
:                                      :      A-4914
THE UNITED STEELWORKERS OF AMERICA,  :
AFL-CIO, UPHOLSTERY AND ALLIED      :
INDUSTRIES DIVISION, LOCAL 352-U    :
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Appearances:

Mr. Brian Lee Mares, Attorney at Law, Steinhilber, Swanson, Mares, Curtis, Marone and Wolk, 219 Washington Avenue, P.O. Box 617, Oshkosh, Wisconsin 54902-0617, appeared on behalf of the Union.

Mr. Philip Schwab, President, Duo-Safety Ladder Corporation, 513 West Ninth Avenue, Oshkosh, Wisconsin 54901, appeared on behalf of the Company.

ARBITRATION AWARD

On February 5, 1992, and on April 24, 1992, the Wisconsin Employment Relations Commission received requests from the United Steelworkers of America, Upholstery and Allied Industries Division, to provide arbitrators to hear and decide grievances pending with the Duo-Safety Ladder Corporation. Following jurisdictional concurrence from the Employer, the Commission appointed William C. Houlihan, a member of its staff, to hear and decide the matters. A hearing was scheduled for May 6, 1992 in Oshkosh, Wisconsin. On that day, a different matter was arbitrated between the parties. The Union thereafter requested certain information and time to review data submitted and such request was granted. The matter was held in abeyance. The Union subsequently communicated a desire to proceed to hearing. A hearing was scheduled and conducted on March 24, 1993 in the Winnebago County Courthouse, Oshkosh, Wisconsin. The proceedings were not transcribed. Post-hearing briefs were received on April 16, 1993.

This Award addresses the layoff of employes Dean Lewis and Vicki Button.

BACKGROUND AND FACTS:

The Company, located in Oshkosh, Wisconsin, is a producer of steel ladders for fire trucks. Dean Lewis, the grievant, is an end capper. In this capacity, Mr. Lewis drills holes in ladder rails, and affixes caps and feet to the ends of the steel ladders.

He has done this work for a period of approximately two and one half to

three years. Mr. Lewis performs his job at a work station, and works the day shift. At times, he has to walk approximately 200 feet to get the rails and then carry them back to his work station where he performs his job. It is his testimony and that of all of the witnesses to this proceeding that the larger the ladder, the higher its numerical designation, and the more work required. That is, a longer ladder requires more caps and is more clumsy.

Fred Starr, the foreman, testified that during the summer of 1991 business was down and there was a perceived need to reduce the work force. At that time, Mr. Starr supervised two end cappers, Mr. Lewis and Doug Jorgenson. In the view of the Company, one end capper had to be laid off. It was Starr's view that the working conditions of the two men was equivalent. The Company maintains production records which served as the basis of the layoff. Those records are kept by the month and reflect the number of ladders worked on, the number of days worked, and the average number of ladders produced per day of work. The Company production sheets show Jorgenson averaging more ladders in 8 of the 9 months preceding layoff. The following chart summarizes the Company data:

	<u>1991</u>									
	Jan	Feb	March	April	May	June	July	Aug.	Sept	
Lewis	76.3	67.7	59.0		63.4		67.1	54.3	64.5	54.1
	63.6									
Jorgenson		73.6	78.6	69.1	76.0		73.5	76.8	71.0	74.9
		69.0								

(daily production of ladders by month)

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Differential -3 +10.9 +10.1 +12.6+6.4 +22.5 +6.5 +20.8 +5.4

Mr. Starr testified that the same ladders are generally run in both the day and night shift. Jorgenson is the capper on the night shift. Given Starr's view that the work performed by the men is essentially comparable work, the Company's view of the production sheets was that Jorgenson was more efficient. Based upon that, the Company determined to lay off Mr. Lewis.

The parties stipulated to the following: Dean Lewis is more senior than is Doug Jorgenson. Notwithstanding that fact, Mr. Lewis was laid off effective September 27 through December, 1991, a period of ten weeks. During that period of time, Mr. Jorgenson

was not laid off.

It was Mr. Lewis' testimony that night work is more productive time than is day shift work. This is the case, argues Mr. Lewis, because during the night shift there is less traffic and congestion and working conditions are easier.

Mr. Lewis is the Chief Union Steward. In that capacity, he attends a number of meetings held during the working day, which subtract time out from production time. It is Mr. Lewis' contention that that time has not been considered in comparing the relative efficiency of the two men. It was Mr. Starr's testimony that Mr. Jorgenson spends considerable time doing work other than end capping, compared to Mr. Lewis. Mr. Lewis is more experienced at end capping than is Mr. Jorgenson, that is, he has performed the work longer.

Both Mr. Lewis and Mr. Jorgenson have received written warnings. Mr. Lewis received a written warning in 1991, just prior to the layoff, for putting end caps on the wrong end of ladders. It is his testimony that he was not solely at fault, that Jorgenson also capped the wrong ends. It is Starr's testimony that Lewis put all the caps on wrong. At any rate, Lewis was the only one disciplined. Jorgenson received a written warning for being in an unauthorized work area. It was the testimony of Starr that the layoff decision was a consequence of the productivity of the two men, and that the written warnings played no part.

Vicki Button, the other grievant, is a plater. As such, Ms. Button takes rails, drills holes in them, and places rivets. The rivets are used to hold plates on. The longer the ladder (i.e., with a higher numbered series) the more plates, and the more time per ladder. At the time of the layoff, Ms. Button was one of three platers, all of whom did essentially the same job. Ms. Button has been with the Company for 14 years, and has been a plater for 4-5 years.

It was Ms. Button's testimony that prior to her layoff, she experienced a number of equipment problems. Specifically, she complained of water in the airlines of the drill. She indicated that that affected the speed of the drill and the efficiency with which she could perform her job. According to Ms. Button, she experienced more problems in this regard than did her co-workers.

Furthermore, those problems were brought to the attention of management, and were not addressed. It was Ms. Button's testimony that she sharpened her own bits, and she sharpened those of her co-worker Bill Moushey. She did so because Mr. Moushey was unable to sharpen his own bits. Her other co-worker, Jeff Herzig, sharpened his own bits. According to Ms. Button, sharpening bits took time away from production and lowered her production totals.

It was Ms. Button's testimony that a mere count of rails will not

yield a fair indication of production because other factors such as the length of the rail, distractions, and ladder weight, influence the amount of work performed. It was her testimony that she believed her average production was close to that of both Jeff Herzig and Bill Moushey.

It was the testimony of Fred Starr, Button's foreman, that the three employes all did essentially the same tasks. Starr further testified that he thought that the slow drill was reassigned away from Button when the matter was brought to the attention of management.

At the time of layoff, it was determined that a plater was to be laid off. As in the above instance, the Company relied upon its production records to select the employe to be laid off. Although submitted in a different form, the Company production records essentially outline the same data as do the records relating to Mr. Lewis. A summary of those records is set forth as a chart below:

1991

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	Jan	Feb	March	April	May	June	July	Aug.
Vicki Button	24.3	28.1	27.0	27.8	26.2	27.6	26.7	23.7
Bill Moushey	28.2	28.9	30.8	29.0	27.6	32.9	27.4	29.8

(daily production of ladders by month)

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Differential (computed by Arbitrator)	3.9	.8	3.8	1.2	1.4	5.3	.7	6.1
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A review of the chart persuaded the Company that Ms. Button was the low producer on her unit.

Ms. Button was laid off effective August 31 through Thanksgiving Week, a period of 12 weeks. Ms. Button is more senior than is Mr. Moushey or Mr. Herzig. Neither Moushey nor Herzig were laid off during that time frame.

ISSUE:

The parties stipulated to the following issue:

Was the training, skill, and efficiency of the grievants Button and Lewis relatively equal to that of less senior employees not laid off?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT:

**ARTICLE IV - SENIORITY**

**Section 1**

Seniority shall mean an employee's length of service with the Company from the date last hired.

**Section 2**

In all cases of promotion, or increase or decrease of forces, the following factors shall be considered, and where factors (B) and (C) are relatively equal, length of continuous service shall govern:

- (A) Length of continuous service.
- (B) Training, skill and efficiency.
- (C) Physical fitness.

#### POSITIONS OF THE PARTIES

The Union, relying upon an exhibit summarizing production it prepared and entered into the record, contends that between January 8, 1991 and October 21, 1991, Lewis worked 108 days and completed 6,485 rails. During that same period of time, Jorgenson is alleged to have worked 110 days and completed 6,630 rails. This reflects a difference of 145 rails over a 110 day period. The Union argues that Article IV, Section 2 requires length of continuous service to govern where factors (B) and (C) are relatively equal. The Union argues that with a rail difference of 145 there was no consideration given to the one hour per month spent in meetings with management or other times in which Dean Lewis could not perform his duties due to Union-related activities. The Union's view is that factors (B) and (C) are relatively equal, and therefore continuous service should govern.

With respect to grievant Button, the Union makes a paralleling argument.

The Union prepared an exhibit outlining and summarizing production for that portion of the calendar year preceding the layoff. Over an 84 work day period, Button had a total of 2,236 rails, or 26.61 rails per day. Moushey produced 1,880 rails over a 69 day period, or 27.24 rails per day. The Union acknowledges that Herzig's production exceeds that of either of the other two employees. It is the view of the Union that given the additional sharpening and other matters that Vicki had to attend to a production difference of .63 rails a day leaves those two employees relatively equal as defined by the contract and should result in Ms. Button's seniority controlling the layoff.

The Company takes issue with the data submitted by the Union relative to the production records of the platers. The Company's claim is that days, or blocks of days, are missing. Further, the Company contends that one cannot simply total up the number of rails and the number of days for that fails to take into consideration the time which Mr. Moushey was doing things other than rails, and the type of rails he customarily works on. The Company urges this arbitrator to look at days when both Moushey and Button work on the same ladders, and contends that if that is done, Moushey's average on those days is higher than is Ms. Button's.

The Company goes on to argue that Mr. Moushey works on special, and more difficult rails and that the difference between Moushey and Button is significant. The Company argues that the time spent by Ms. Button sharpening drill bits, taking hearing tests, repiling rails and having equipment repaired is no more or less than that experienced by other workers.

With respect to Mr. Lewis, the Company makes essentially the

same argument. The Company attacks the exhibits and data submitted by the Union as incomplete, and/or missing days or blocks of days. According to the Company, the Union has used a time frame extending from January 8 through October 21, 1991. Any dates after September 30 should not be considered because they came after determination of layoff status. The Company contends that the time Mr. Jorgenson spent doing work other than rails has not been factored into the Union exhibit. The Company points to its own exhibit which indicates that between January 1, 1991 and September 30, 1991, Mr. Lewis completed 9,872 rails in 153.7 days, and Mr. Jorgenson completed 7,864 rails in 106.8 days. The data indicates a daily average for Mr. Lewis of 64.23 rails per day and for Mr. Jorgenson of 73.63 rails. The Company argues that those factors exclude time doing Union business and other things for both employes. The Company argues that a difference of 9.4 rails per day is significant. 9.4 rails per day times 200 work days per year yields 1,880 or the equivalent of 25.53 days of work by Mr. Jorgenson.

In both matters, the Company believes it acted within its right.

#### DISCUSSION:

I believe that Article IV - Seniority, Section 2 - permits the Company to look at employe efficiency as a significant factor in decisions as to who is to be laid off. In this dispute, there is no issue raised with respect to factor (C), Physical Fitness. The parties do not contend that one grievant is more or less physically fit than another, and I do not believe it to be relevant in this proceeding. The parties discussed the training of the various employes at times, but that appears not to have entered into the decision with respect to layoff. The parties have stipulated that the grievants have relatively more seniority than do the employes who were not laid off. This case, in my mind, boils down to a question of whether or not the grievants skill and efficiency was relatively equal to that of employes not laid off with less seniority.

An examination of the Company's production records supports the Company's position that Jorgenson is significantly more productive than is Lewis. The Company concludes that Jorgenson in one year's time will provide it with an extra month of production than will Lewis in a similar time period. This is particularly true if efficiency, as opposed to production, is measured. The contract talks about skill and efficiency. What the numbers really suggest is that Jorgenson is far more efficient than is Lewis. The Company numbers are essentially a measure of hourly productivity. While they are reported out in monthly amounts, they are essentially broken down by the number of days (and the days are further divided into the proportionate part of the day which is spent on production) and an hourly production rate is



left for each employe for each month.

The numbers submitted by the Union show a different story. As argued by the Union, the numbers show a relatively small difference between the two men's productivity, particularly when it is noted that that difference is spread over a ten month period. I have reviewed the Company exhibit and the Union exhibit at length. I cannot reconcile the two. The numbers from those two exhibits are incompatible. The Union exhibit shows Mr. Lewis working 108 days and producing 6,485 rails. It goes on to show Mr. Jorgenson working 110 days producing 6,630 rails. The Company exhibit shows Mr. Lewis working 153.7 days and producing 9,872 rails. It shows Jorgenson working 106.8 days and producing 7,864 rails. I have examined both exhibits, done the same kinds of arithmetic found in both briefs, and found the two computations to be mathematically accurate.

The Company argues that the Union's exhibit has excluded days and blocks of days from consideration. That appears to be the case. The Company has a 153.7 day basis for Lewis; the Union has a 108 day basis for Lewis. While I can understand that the Union document might contain a less complete view of the productivity of the employes in question, it is beyond my comprehension how the Union's exhibit, which reflects so many fewer production days for Lewis could actually reflect 3.2 more days of production for Jorgenson. The Union's exhibit shows Jorgenson working 3 days more than does the Company exhibit but producing 1,200 fewer rails.

The Company suggests that I review the Union's exhibit and compare days where the men worked on common ladders. I did so. I found this exercise to be very difficult. The daily production of the facility is not "pure" in the sense that every employe is given the same task and the same amount of each task each day. However, I did find a number of days where it appears the men worked on the same product. However, some of those days Mr. Lewis was more productive, and on some days Mr. Jorgenson was more productive. From the Union exhibit I felt that March 19, March 21, March 28, April 4, April 11, April 16, April 17, April 18 and May 17 were days in which the men worked on relatively common products. Of those days, it was my conclusion that Mr. Lewis was more productive five times, and Mr. Jorgenson more productive four times.

I reviewed Union Exhibit #1 in order to assess whether one man or the other worked on particularly difficult ladder. My review suggests that Mr. Lewis did significantly more of the smaller ladders, i.e., Series 300 or less, than did Mr. Jorgenson. By my count, Lewis did 425 of these smaller ladders to 62 for Jorgenson. I believe that Jorgenson did a few more of the 700-1000 Series length ladders. I also believe that Jorgenson did more of the 1200 Series ladders. I found that Lewis did more of

the very largest, that is, 1500 Series and Snorkel and that he also did more "miscellaneous" ladders. However, I found that there were relatively few of these ladders done by the Company, i.e., approximately 225 for Lewis versus 175 for Jorgenson, all told. This is in comparison to the 1200 Series ladders where Lewis did approximately 1250 and Jorgenson did approximately 1750.

Ultimately, in making an assessment as to who is more productive, or efficient under the terms of the contract, I had to make a decision as to which database to accept. Ultimately, I believe the Company's data is more complete and thorough. I am troubled by what I regard as the incomplete nature of the Union's data. I believe the Union's data has been selectively assembled to prove a point. The references in the Union's data to Mr. Lewis' union meetings support the Union's contention that this is a factor that ought to be considered. However, Starr testified that Jorgenson regularly performs a number of other tasks that are not reflected in the Union's exhibit. Upon acceptance of the Company's database, that data supports the Company's decision.

I have the same concerns relative to the data submitted in the Button grievance. Company production records cover a period of 163 days, from January through mid-August, 1991. For Ms. Button, there are 13 days for which there are no production numbers. Six of those days are accounted for by vacation. For Moushey, there are 46 days for which there is no production indicated. However, 33 of those days are accounted for. Mr. Moushey was "off the bench" for 19 days, was on vacation for two days, and was assigned other work which was recorded in the production log on 12 days.

The Union exhibit has a common reporting period, that is, January through mid-August, 1991. However, there are only 87 production days identified by the Union exhibit. There are numerous days for which no production is reported, and for which there is no explanation. Of the 87 production days, Moushey has no numbers for 17 days and most of another. Ms. Button, on the other hand, has but two days for which there are no numbers and no explanation. I have the same misgivings as to how the Union's exhibit was assembled as I have in the Lewis matter.

The Union exhibit contains a number of notations for Ms. Button, i.e., hearing test and sharpening bits. These notations would suggest that the noted tasks were ones which would take her away from her job. These comments are conspicuously absent in the production columns for both Moushey and Herzig. It was the testimony of all parties that Herzig was capable and actually did his own bit sharpening. It was also the testimony of all parties that hearing tests would be common to all three. The absence of these time-consuming interruptions from the production columns of Bill and Jeff suggest that they are considered by the Union only

in the production totals for Vicki.

Ms. Button testified that she had problems with her drill. It is not hard to imagine how that would compromise her efficiency. However, I have no idea how to measure what, if any, productivity consequences resulted. I do believe that if the Company intends to continue to rely upon production records as a measure of efficiency, it is obligated to eliminate impediments to production as they arise.

The Company suggests looking at days where all three workers worked on common projects. I did so. I found six such days. Those days included January 23, May 28, June 14, June 17, July 9 and July 16. In each instance, Ms. Button had the lowest productivity for the day in question. 1/ I found three other dates where the ladders worked on, while not identical, were close. On each of those dates, May 22, May 25 and June 12, Ms. Button had the lowest productivity.

For all the reasons set forth in the Lewis matter, I find the Company's data more accurate, more thorough and more compelling. The Union's claim in this matter is that Button is relatively equal in terms of her efficiency to Moushey. In its post-hearing brief, the Union drops its contention relative to Herzig. Using the Company data as a base, I measured the differential between Moushey and Button over the 8-month period. It is my conclusion that the average daily differential is approximately 2.9 units per month. That translates into approximately a 10 percent difference, which I find to be very significant.

In summary, I believe the Company has demonstrated that it exempted employes from layoff who were demonstrably more efficient than were those employes laid off. That being the case, I find no basis to sustain either of the grievances filed.

AWARD

Both grievances are denied.

Dated at Madison, Wisconsin this 21st day of July, 1993.

By William C. Houlihan /s/  
William C. Houlihan, Arbitrator

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1/ On May 28, 1991 both Bill and Vicki produced 32 plates.