

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

W.S. DARLEY EMPLOYEES ASSOCIATION

and

W.S. DARLEY & COMPANY

Case 2 Case 8
No. 49845 No. 49851
A-5123 A-5129

Case 4 Case 9
No. 49847 No. 49852
A-5125 A-5130

Case 5
No. 49848
A-5126

Appearances:

McKinley & Anderson, by Mr. Robert W. McKinley, on behalf of the Union.
Weld, Riley, Prenz & Ricci, S.C., by Mr. James M. Ward, on behalf of the Company.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Company", are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held in Chippewa Falls, Wisconsin, on January 24, 1994. The hearing was not transcribed and both parties filed briefs which were received by February 28, 1994.

Based upon the entire record, I issue the following Award.

ISSUE

Did the Company violate Article III, Section 3, of the contract by not allowing grievants Jeffrey Smith, Robert Christorf, Randy Nyhus, Roger A. Ewings, and Michael Hanson to bump into the Truck Finisher classification and, if so, what is the appropriate remedy?

DISCUSSION

This dispute stems from a downturn in the Company's pump business and its decision in June, 1993, to layoff the grievants and 12 other employees in its Fire Pump Division effective June 14, 1993. The Company also has a Fire Apparatus Division which manufactures fire trucks. That division was not experiencing any economic difficulties and hence no layoffs were effectuated at that time.

Drill Press Operator Robert Christorf was employed since 1991 in the Pump Division before

his layoff. While he never had any experience as a Truck Finisher, he does have extensive prior experience as a mechanic, during which time he worked on jigs, fixtures, and

lathes and he took a 10-week course in hydraulics. He also worked as an auto mechanic for a car dealership and has about 90 percent of the tools needed to be a Truck Finisher.

Pump Assembler Ewings was hired as a temporary employe in 1992. Prior thereto, he was a farmer for about 29 years during which time he worked on farm machinery. Ewings -- who turned down a Truck Finisher's job in early 1993 because he wanted to stay on the night shift and who sometimes worked on pumps in the Fire Apparatus Division -- told the Company after his layoff that he would work as a janitor, but he did not receive that position because he did not obtain a needed commercial driver's license (CDL) until August 13, 1993. He also said that no one from the Company asked him whether he could perform the Truck Finisher's job and that he is uncertain whether he ever told the Company that he wanted that job. He also said that he never responded to an August 16, 1993, letter from the Company because he by that date had obtained another job. Ewings owns about 75 percent of the tools required of a Truck Assembler.

Drill Press Operator Hanson was hired in 1992. While he never worked as a Truck Finisher, he has about 80 percent of the tools needed for that job and he has worked on oil rigs in Wyoming, during which time he worked on various mechanical equipment, including hydraulics. In addition, he attended technical college where he studied machine tools. He asked for a Truck Finisher's job about a month after he was laid off, but was told that he was unqualified even though he was never interviewed.

Jeff Smith, who turned down a janitor's job, was hired in 1991. He formerly performed equipment maintenance work and attended vocational school for machine courses. Prior to his layoff, he asked to bump into the Truck Finisher's classification, but was turned down because he did not have any experience as a Truck Finisher. He has all of the tools required to be a Truck Finisher and he has been around fire trucks ever since his father was a firefighter.

Welder Nyhus was hired in 1991. He previously worked as a welder, plumber, and pipefitter and has an extensive electrical background. He has almost all of the tools needed to be a Truck Finisher and a June 25, 1993, letter from the Company states that he and Christorf have more qualifications than some of the latest new hires.

Truck Finisher Thomas Schimmel testified on behalf of the grievants by stating that there are a number of routine Truck Finisher jobs that the grievants could perform such as deburring, working on mud flaps, and installing doors and lights if given the chance to do so because, in his words, "senior people on the truck help you along." He also said that the grievants could have worked on the Taiwan trucks which are easier to work on than some of the Company's other trucks.

Assembler Joseph Bowe, who has been employed since about 1972, testified that Ewings is qualified to be a Truck Finisher because the Company is doing the same things on a "smaller scale" and because he can read blueprints and the contract as to what must be built. Bowe also

said that the Union during the 1984 contract negotiations agreed to a lower wage schedule in exchange for a more liberalized job posting procedure which enables anyone in the plant to move into different jobs and that, "Our guys have preference over new employes" for such jobs.

Apparatus Supervisor Terry R. Hughes testified for the Company. He said that "amateurs go to the drill press"; that there were no job postings before 1984; that fire trucks were simpler to build then; that contracts for particular trucks are not "cut and dried"; that the "control panel is a roadmap" as to what must be done on each truck; that employes see him if they have any questions; that Truck Finishers must use "past experience in building the trucks"; and that a new employe needs one to two months on the job "just to get the gist" of what is going on. He also said that Ewings worked on standard pumps; that welding is used less than ten percent; that the four less senior employes who transferred from the Pump Division into the Truck Finishers classification in February, 1993, have the same qualifications as some of the grievants; that it would be "devastating" to assign four new employes to the same truck; and that that is why they must be "spread around".

General Manager Jeff Darley testified that he did not know about the Company's economic downturn when the four Pump Division employes posted into the Apparatus Division in early 1993; that initially, "The basic disqualifying factor [for the grievants] was that if there was no prior experience as a Truck Finisher, employes could not bump" into those jobs when the layoff came; that the Company ultimately backed off this position after it learned that the grievants wanted to bump into those jobs; and that he subsequently sent letters to the grievants asking for their qualifications. He also said that it takes about a year for the Company to get a return on its investment when it hires new employes; that "We were looking for people to walk into the job"; and that Nyhus would have been hired per a posting, but not through bumping because he was unqualified to immediately perform all of the required tasks.

He further testified that about 15 of the current Truck Finishers originally came from the Machine Shop and that the Company offered the grievants the opportunity to do repetitive work on the Taiwan trucks which would have lasted about 5 weeks, but that the Union refused to go along with that because it also wanted the grievants to bump the least senior Truck Finishers, which the Company refused to do.

The Company sent letters to the grievants after their layoffs asking them to describe whatever prior experience they had bearing on their ability to work as Truck Finishers. Only Nyhus and Christorf replied, but they were unsuccessful in convincing the Company that they were qualified for that position. All of the grievants were recalled by December 1, 1993, except for Ewings who found another job and decided not to return to the Company. The grievants grieved their layoffs, hence leading to the instant proceeding.

In support therein, the Union argues that the Company violated Article III, Section 1, of the contract by laying off the grievants and not letting them bump less senior employes in the Fire

Apparatus Division. It asserts that "each of the individual grievants demonstrated or possessed sufficient qualifications. . ." to do so; that the Company's position "is designed to inhibit and defeat legitimate seniority rights of Association members. . ."; that any of the grievants were entitled to transfer into these jobs had they been posted; and that the Company has failed to establish that "the production of the truck finishing plant had been harmed, in any way by filling openings in the truck finishing plant with individuals who had no prior truck finishing experience." As a remedy, the Union requests back pay for all the grievants.

The Company, in turn, maintains that none of the grievants are qualified to perform the Truck Finisher's job without extensive on-the-job training; that arbitral precedent supports its position; that while the grievants were qualified to post into the Truck Finishers jobs when they were vacant and when there would not be any added loss of productivity, they were unqualified to bump into them because that would entail the layoff of more qualified employees; and that its practice of awarding posted Truck Finisher positions to less qualified employees is immaterial to the issue posed here.

The resolution of this issue turns on Article III, Section 3, of the contract which provides:

When a reduction in the work force is necessary it shall be offered to the employee with the least seniority within the department being reduced. Employee may accept the layoff or replace any other employee within the bargaining unit with less seniority, provided senior employee is qualified to perform the job duties of employee he/she is replacing. An employee that accepts the layoff shall reserve the right to replace employees with less seniority or post for job openings at any time up to 2 years continuous layoff. Employee with most seniority shall be recalled first provided senior person has ability or qualifications to fill position. In the event more than one employee has the same anniversary date, layoff and recall will be determined by birthday. (i.e. employee born in January has seniority over employee born in February.) (Emphasis added).

The key phrase here is "qualified to perform the job duties of employee he/she is replacing." The nub of this dispute therefore hinges on whether the grievants were "qualified" to perform the Truck Finisher's job had they been allowed to bump into that job and thereby displace less senior employees. The answer to that depends on what time frame is looked at.

Long term, it seems clear that all of the grievants can perform the Truck Finisher's job duties, some better than others because of their prior backgrounds. Indeed, the Company itself has tacitly recognized that Pump Division employees can transfer to the Apparatus Division since it regularly has allowed such transfers as late as January, 1993, and since it was willing to let Ewings post into this job in early 1993 before he turned it down. Moreover, Darley himself told Nyhus and Christorf by letter dated July 14, 1993, that, "If we were considering posting a job

opening for a truck finisher your qualifications are as good as some of the employees we have allowed to change jobs in the past." In addition, both Schimmel and Bowe testified that the grievants immediately could have performed some of the Truck Finisher's duties.

But short-term, it is also clear that the grievants are not able to immediately perform all of the Truck Finisher's duties, as it takes several years to become totally proficient in all areas of the job. Indeed, given the unique features of each fire apparatus, the lack of blueprints, and the customized building which normally goes into each piece of equipment, it appears that even experienced Truck Finishers always have something to learn, in which case they turn to others for help. In short, the Truck Finisher's job represents a constant learning experience. It therefore is unfair to expect the grievants to have all of this expertise and to bar them from bumping into the Truck Finisher's job because they lack it.

Hence, there is no merit to Darley's claim - contained in his July 14, 1993, letter that "a senior employe must be qualified from day one to perform all of the various tasks customarily assigned to a classification." For if that were the case, the Company never would be able to hire any Truck Finishers, as it is impossible for any new employes to perform all of those tasks "from day one". As a result, the Company must allow some leeway when it fills the Truck Finisher classification. 1/

This case therefore turns on balancing these two competing interests: on the one hand, we have the grievants' legitimate interest in being allowed to bump into jobs which they can learn to perform over time; on the other hand, we have the Company's interest in maintaining high productivity and in retaining the less senior employes in the Apparatus Division because of the expertise they gained from early 1993 to the time of the June, 1993 layoffs.

While a close question, I find that the balance must be drawn in the Company's favor because, as the Company rightfully points out, arbitrable law establishes that employes wanting to bump into different jobs must perform the latter tasks without extensive training following a reasonable break in period. For example, in Reynolds Electrical and Engineering Co., 91 LA 1289 (1988), Arbitrator Charles Morris denied the grievance of a more senior employe because:

Grievant was confident that with some training she could competently do the work. I have no reason to doubt that is correct, for I was impressed that the Grievant is an intelligent and good worker who probably has the

1/ The Company already does that for employes transferring in from the Pump Division. But that situation is different from this situation since transferred employes post into vacant slots, which are not generating any production. As a result, the Company is more tolerant of longer break-in periods when positions are vacant because less senior employes who can generate more productivity are not being displaced.

physical capacity, assuming she also can receive the necessary training, to perform the job in question. But it is clear from the evidence that training and/or experience is a requisite for the ability to perform the work of a tireman. I am not called upon to indicate how much training and/or experience would be required. It is sufficient for me to find, and I do so find, that at the time of her layoff, Grievant was not able, hence was not qualified, to perform the work of a tireman.

. . .

..."To perform the work" must be construed to include all of the duties assigned to a given classification. Performing the work of the flame spray operator certainly involves the operation of the flame spray equipment. It is not persuasive when the Union argues that a man should be allowed to bump a junior flame spray operator who is performing all of the duties in the job, simply because the bumper can operate the blasting equipment related to the flame spray operation. The operator certainly must be able to do flame spraying as required at Airwork and if he cannot, he cannot "perform the work."

Arbitrator Howard G. Foster in Roblin Steel Company, 81-1 ARB 8115 (1981), similarly ruled:

The issue thus reduces to whether the grievant in fact had the ability to perform the millwright's job. Although the general standard used by the Company was whether the employee had previously held the desired job on a permanent basis, its response to this grievance, as well as its testimony at the hearing, suggest that in this case the standard was in fact less mechanical and more substantive. In particular, the Company's decision was based on its finding that the grievant had not performed the job of millwright in its entirety. This finding, in my judgment, is adequately supported by the record. Although the grievant's work, by all accounts, had been beyond reproach, and although there is no basis to dispute his claim that he could learn the job quickly, there is not enough to warrant sustaining the grievance. While it is true that the grievant has worked as a millwright on a number of occasions and has performed several of the millwright's tasks, he has not performed the job. The notion of a "job" must encompass all the tasks associated with it. The testimony at the hearing covered a good number of these tasks. Several had never been performed by the grievant, others he had performed only in the capacity of assisting other workers and still others he had performed many years ago. On balance, the testimony was persuasive in

its showing that, on the basis of his prior experience at Roblin, the grievant would not have been able to step in and perform the totality of the millwright's job, especially under circumstances in which he would have been working alone. And if his ability had been enhanced by experience elsewhere, that was not shown at the hearing.

Arbitrator Marlin M. Volz reached the same result in Greater Louisville Industries, 44 LA 695 (1965), when he stated:

The remaining issue concerns the grievants' "ability to do the work required" within the meaning of Section 2 of Article IX. This provision does not contemplate that the senior man have more ability or ability which is approximately equal to that of the junior retained. The only contractual standard prescribed is that he possess the ability at the time of the layoff, unassisted by any training or trial period, to perform the job in question in the usual manner. To be an effective employee during a short-term layoff he must have a present ability and not a potential ability and must be able to produce at the customary efficiency after allowing some time -- probably a day or less in the normal case -- to adjust to the procedures of the new job.

Ditto for Harsco Corp., 30 LA 326 (1957), where Arbitrator Robert F. Koretz concluded:

In other words, it was not enough to make Collins "qualified" that he had performed some tasks or duties that junior employees in other classifications, such as Die Maker, Boring Mill Operator, or Cutter Grinder, had performed; it was necessary that he be "qualified" to perform the essential duties of a particular job classification. It is true that the evidence shows that on frequent occasions, particularly at times of reduced operations, employees were assigned to some tasks not associated with their classification; for example, Collins, a Keller Machine Operator, was assigned when there was no Keller work to work "on the floor" performing some tasks associated with other classifications. But the evidence fails to establish that Collins was "qualified" to perform the essential content of a job classification held by an employee having less seniority within the department.

Applying these same principles here, it is clear that the grievants were unable to perform the essential tasks of the Truck Finisher classification at the time of their layoffs and that they were not as "qualified" [i.e. productive] as the less senior Truck Finishers who had been doing those tasks since the early part of 1993.

To be sure, the grievants were "qualified" to perform some of the routine, fairly simple tasks being performed on the Taiwan trucks which were nearing completion at the time of their layoffs. The record shows, however, that the Company offered that work to the grievants, but that they turned it down because they wanted to bump less senior employees once that work was finished. Under the facts here, I find that the Company's offer was reasonable and that it was not required to do anything more.

In light of the above, it is my

AWARD

That the Company did not violate Article III, Section 3, of the contract by not allowing grievants Jeffrey Smith, Robert Christorf, Randy Nyhus, Roger A. Ewings and Michael Hanson to bump into the Truck Finisher classification; their grievances are therefore denied.

Dated at Madison, Wisconsin this 12th day of May, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator