

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
 : Case 51  
UNITED PAPERWORKERS INTERNATIONAL : No. 50599  
UNION, LOCAL 7815 : A-5185  
 :  
and :  
 :  
FWD CORPORATION :  
 :  
- - - - -

Appearances:

Mr. Donald O. Schaeuble, International Representative, United  
Paperworkers International Union, 8021 West Tower Avenue, Milwaukee,  
Wisconsin 53223, for the Union.  
Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, by  
Mr. George D. Cunningham, for the Company.

ARBITRATION AWARD

United Paperworkers International Union, Local 7815, ("the Union") and  
FWD Corporation ("the Company"), are parties to a collective bargaining  
agreement providing for final and binding arbitration. Pursuant to the  
parties' request for the appointment of an arbitrator, the Wisconsin Employment  
Relations Commission, on March 28, 1994, appointed Jane B. Buffett, a member of  
its staff, to hear and decide a dispute regarding the interpretation and  
application of the agreement. Hearing was held in Clintonville, Wisconsin on  
May 5, 1994. No transcript was taken. The parties filed briefs, the last of  
which was received June 7, 1994.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Company violate the contract by treating the  
Grievant, K.H. as an inexperienced employee for purposes  
of initial wage placement? If so, what is the  
appropriate remedy?

BACKGROUND

The Company manufactures fire engines. In August, 1990, Grievant K.H.  
applied for a position with the Company working on the wash rack. After being  
interviewed, he was hired for a position on the press brake and he was placed  
on the wage progression at the inexperienced rate. The Company determined that  
he was inexperienced within the meaning of the contractual wage progression  
because he had only had nine months working in metals at Utility Tool and Body,  
only part of which was press brake work and that was not a computer-controlled  
press brake.

In March, 1992, after Steve Marg was hired, Grievant trained him on the  
Computer Numeric Controlled (CNC) press brake. When Grievant learned that Marg  
had been hired above the starting wage rate, he complained to his supervisor,  
John Severns, that he was training someone who had been hired at a higher rate  
than the rate at which he had been hired. Severns responded by seeking and  
obtaining authority to advance Grievant two steps along the wage progression.

Approximately a year later, Grievant was again training a new employee  
whom he believed had been hired at a higher rate than his own rate at time of  
hire. Consequently, on April 22, 1993, Grievant filed a grievance alleging  
that he not placed at the proper wage rate when he was hired and his wage rate

should be adjusted. That grievance is the subject of this award.

#### RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

##### ARTICLE VI

##### GRIEVANCE PROCEDURE

(70)(a) Any employee having a grievance, concerning the meaning of application of any provision of this Agreement, shall verbally discuss his complaint or grievance with his foreman, with or without his steward present. Should the matter not be adjusted satisfactorily, the complaint may be reduced to writing by filling out and signing in triplicate, a complaint on a standard form furnished by the Union. Said complaint shall specifically set forth his grievance and shall be countersigned by the steward of his department who shall keep a copy thereof. The original shall be delivered to the employee's foreman, who will acknowledge receipt of same by affixing his signature and the date on all copies. Such grievance shall be reported in the manner above provided within five (5) working days after it occurs if the nature of the grievance permits.

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#### POSITIONS OF THE PARTIES

##### The Union

The Union notes Grievant's experience at Utility Tool and Body and the training he received at Brown and Sharp and asserts that he should have been classified as "experienced." The Union also reaches that conclusion by comparing Grievant's experience with that of other employees hired after him. It asserts the previous personnel director misplaced Grievant on the salary progression and asserts that work on a manual press brake in which Grievant had experience was more demanding than work on the computer-controlled press brake.

As to timeliness, the Union notes that the Company has voluntarily resolved grievances that it first asserted were untimely.

##### The Company

The Company asserts the grievance, filed two and a half years after K.H. was hired, is untimely and therefore must be denied. Additionally, the Company asserts the resolution of the matter in March, 1992 must be respected as the final disposition of this dispute. Finally, the Company asserts that Grievant was properly placed on the wage progression when he was determined to be "inexperienced."

#### DISCUSSION

The threshold issue of arbitrability must be addressed before the merits of the grievance can be considered. Grievant first complained of his placement on the wage progression in March, 1992. This action comported with the first step in the grievance procedure (See Section (70)(a) cited above), which requires an employee who has a grievance concerning the application of the collective bargaining agreement to discuss it with his foremen. In response,

his foreman, John Severns, obtained for Grievant a two-step advancement along the wage progression. At that time, Grievant accepted the wage placement jump in satisfaction of his complaint about his wage rate.

The Union does not offer any reason why the March, 1992 wage adjustment should not be deemed as a settlement of Grievant's complaint. There is no evidence that either the Union or Grievant reserved the right to seek additional modification of his wage placement. Given these facts, Grievant's acceptance of the two-step advancement indicated there was a satisfactory adjustment of his complaint or verbal grievance as provided by section (70)(a) of the contract's grievance procedure.

The parties must live by their agreements, and grievances that have been resolved by such agreements are not arbitrable. If such were not the case, the parties would have no incentive to voluntarily resolve grievances short of arbitration and the collective bargaining relationship would be undermined.

Having found that this grievance had been previously settled, the undersigned concludes it is not arbitrable and it must be denied.

In the light of the record and the foregoing discussion, the undersigned issues the following

AWARD

1. The May 13, 1993 grievance of K.H. is not arbitrable.
2. The grievance is hereby denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 14th day of July, 1994.

By Jane B. Buffett /s/  
Jane B. Buffett, Arbitrator