

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LOCAL 7815, UNITED PAPERWORKERS INTERNATIONAL
UNION, AFL-CIO, CLC**

and

FWD CORPORATION

Case 67
No. 55435
A-5603

Appearances:

Mr. Donald O. Schaeuble, International Representative, United Paperworkers International Union, appearing on behalf of the Union.

Foley & Lardner, Attorneys at Law, by **Mr. George D. Cunningham**, appearing on behalf of the Company.

ARBITRATION AWARD

Local 7815, United Paperworkers International Union, AFL-CIO, CLC, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. FWD Corporation, herein the Company, concurred with said request and the undersigned was designated as the arbitrator. The parties stipulated to waive the contractual Arbitration Board and to have the undersigned be the sole arbitrator. Hearing was held in Clintonville, Wisconsin, on October 9, 1997. A stenographic transcript of the hearing was not made. The parties completed the filing of post-hearing briefs on January 12, 1998.

ISSUE

Did the Company violate the labor contract by not allowing Don Yaklyvich to bump Lisa Dohr from the position of Parts Washer, which position she had been awarded and she had accepted but to which she had not been transferred?

BACKGROUND

Prior to March 3, 1997, there were two employees on the first shift in the classification of Parts Washer. One of those employees bid off the position of Parts Washer. On March 3, 1997, the Company posted an opening for a Parts Washer. Three employees bid on the posting. The job was awarded to the bidder with the most seniority, Scott Weygandt. Weygandt was transferred to the job of Parts Washer, but later elected to return to his previous job. The Parts Washer job was then awarded to Lisa Dohr on March 17, 1997. On March 19, 1997, the Company put up a posting for Dohr's replacement. Dohr continued to work as a Utility Operator-Fab while a replacement for her was being sought. Also, on March 19, 1997, Don Yaklyvich, who held a Parts Washer position on the first shift, was advised that he was being bumped from that position by a more senior employee. On that same date, Yaklyvich requested that he be allowed to bump Dohr from the Parts Washer position. Yaklyvich was told by the Company that he could not bump Dohr as a Parts Washer because she was still working in the Utility Operator position and that he was not qualified to be a Utility Operator-Fab. Yaklyvich then bumped a less senior employe on the second shift who held a Parts Washer position. Later on March 19, 1997, Dohr informed her supervisor that she was declining the Parts Washer position which had been awarded to her.

POSITIONS OF THE PARTIES

The Union argues that the Company violated the contract by not allowing Yaklyvich to bump into the Parts Washer position on the first shift which Dohr had accepted. By refusing to let Yaklyvich bump Dohr, Yaklyvich had to bump a less senior employe on the second shift. The Company's decision gave Dohr superseniority in the Parts Washer position. The Union believes its position is supported by a prior situation where an employe was awarded a posted position, but never physically moved into the position because the employe was on a disability leave of absence. In that case, the Company posted the awarded position as a temporary opening.

The Company asserts that the contract language is clear and ambiguous in allowing a senior employe to bump into the job which is occupied by the junior employe, who is being bumped, at the time the bump is to occur. The contract distinguishes between being awarded a job and actually holding a job. Thus, when Yaklyvich wanted to bump Dohr on March 19, 1997, he would have to bump her from the job of Utility Operator-Fab, in which job Dohr was working on that date, but he would be unable to bump Dohr from the job of Parts Washer because Dohr had not yet moved to that position. The Company contends that there is no relevant past practice to support the Union's position. The case discussed by the Union did not involve a layoff situation and, further, the employe in that case was moved to the new job immediately. In a different 1997 case, one employe bumped another in exactly the opposite pattern advocated by the Union in this case and there was no grievance filed.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE V

. . .

PROMOTION

(55) . . . Employees who post for and accept the award of a new job will not be allowed to post for a new job for ninety (90) days except that they may post for a new job that becomes available during the time between their acceptance of the first job and their actual move to that job. They will be given ten (10) workdays once they are moved to the new position during which time they can reject the new job assignment and return to their previous position. No position will be filled until such applications are processed.

. . .

(56) (d) In the event a job becomes vacant because of a disability, the Company will post such positions as "00" Temporary after such employee is unable to work for a period of three (3) weeks or in the likelihood the employee's absence will continue for an extended period of time.

. . .

SCARCITY OF WORK

(58) (a) In case of lay-offs or return to work following lay-offs, the principle of seniority shall prevail, that is, the last person hired shall be the first laid off. In the department and on the shift where there is a scarcity of work, the least senior employee working in the classification that needs to be reduced shall be laid off, and the last laid off shall be the first rehired, provided such employee is able to do the available work in a normal and average manner. The most senior displaced employee has the right to choose his/her assignment among the ones that are open.

If the employee does not have the ability to perform the work in a normal and average manner, he will be laid off from the department and shift in question and be replaced by the employee he had displaced. Upon being laid off he may exercise the contract's bumping rights.

(59) (b) Any employee laid off, or, not recalled for work other than by plant-wide seniority, who feels he has the qualifications and ability to perform an available job, held by an employee of lesser seniority, shall discuss the job with the Personnel Department. If any reasonable doubt exists as to his ability to do

the available work in a normal and average manner, the employee will be given a trial of up to five (5) working days to demonstrate that he is capable of doing the available work.

...

EXERCISE OF SENIORITY

(63) (a) Employees who are laid off in accordance with Paragraphs (59) or (60) of this Article must exercise their seniority rights for the purpose of employment priority as soon as possible, but no later than five (5) working days after such layoff.

...

DISCUSSION

Neither party explained why Yaklyvich had to leave the Parts Washer position on first shift. If the position, which had been awarded to Dohr, was still open because Dohr had not yet been transferred, then that position was an open assignment which could have been chosen by Yaklyvich, pursuant to Section 58(a). If said position was considered to have been filled by virtue of being awarded to Dohr, then Yaklyvich should have been allowed to exercise his seniority to bump Dohr from the Parts Washer position. Dohr then could have exercised her seniority to stay in the Utility Operator-Fab position where she had been working. The Union's position that Dohr had to be laid off, rather than remaining in or returning to the Utility Operator-Fab position is not sufficiently explained to be persuasive and appears to be inconsistent with the contract.

Section 59(b) refers to the right of a laid off employe to move to a position held by an employe of lesser seniority, if the laid off employe is qualified to perform the work of that position. Said provision does not give any further definition to the phrase "held by." Thus, the provision reasonably could be given either party's interpretation.

The undersigned does not find the prior occurrence involving a Donny D. to be a precedent. In that case Donny D. was off work on a disability leave when he was the successful bidder for a new position. Although he was unable to begin working in the new position because he was on a disability leave, for the same reason he was not then working in his prior position. Thus, it made little difference whether he was considered to have moved immediately to his new position. Moreover, that case did not involve a layoff situation.

The Company's refusal to lay off Dohr from the Utility Operator-Fab position appears to be reasonable, since Yaklyvich was not qualified to bump her from that position. However, the Company fails to present a persuasive basis for refusing to allow Yaklyvich to take the Parts Washer position which had been awarded to Dohr. Such a refusal appears to be inconsistent

with the language of Section 58(a) which reads: "The most senior displaced employee has the right to choose his/her assignment among the ones that are open." Following the Company's line of reasoning, since Dohr could not be bumped from the Parts Washer position because she still held her prior position, then the Parts Washer position must have been an open position to which Yaklyvich could have moved. Consequently, it must be concluded that the Company violated the contract by requiring Yaklyvich to move to a Parts Washer position on the second shift, rather than remaining on the first shift as a Parts Washer. However, there is no appropriate remedy since the Company offered the Union an opportunity to allow Yaklyvich to remain on the first shift as a Parts Washer, which opportunity the Union refused.

Based on the foregoing, the undersigned enters the following

AWARD

That the Company did not violate the contract by refusing to allow Don Yaklyvich to bump Lisa Dohr from the position of Parts Washer; that the Company did violate the contract by refusing to allow Yaklyvich to move to the open position of Parts Washer on the first shift; and, that, for the reason set forth above, there is no remedy found to be appropriate in this matter.

Dated at Madison, Wisconsin, this 17th day of March, 1998.

Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator

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