

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CARPENTERS' LOCAL NO. 2190**

and

**MARSHALL ERDMAN & ASSOCIATES, INC.**

Case 10  
No. 55794  
A-5635

*(Grievance of Bill Klubertanz)*

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Appearances:

**Mr. Michael Kenny**, Representative, Local No. 2190, Midwest Council of the United Brotherhood of Carpenters and Joiners of America, on behalf of the Union.

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by **Mr. Thomas R. Crone**, on behalf of the Employer.

**ARBITRATION AWARD**

Carpenters' Local No. 2190, Midwest Council of the United Brotherhood of Carpenters and Joiners of America, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Marshall Erdman & Associates, Inc., hereinafter the Employer, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Employer subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on January 23, 1998 in Madison, Wisconsin. There was no stenographic transcript made of the hearing and the parties waived argument in the matter. Based upon the evidence, the undersigned makes and issues the following Award.

**ISSUE**

The parties could not agree on a statement of the issue and have agreed the undersigned will frame the issue to be decided.

The Union offered the following statement of the issue:

Should Bill Klubertanz be awarded the BP-155 job?

The Employer proposed the following statement:

Did the Company violate Article VI, Sec. 1, when it selected Brett Anderson for the position of BP-155 CNC Router Operator over the Grievant?

The undersigned concludes that the Employer's statement of the issue more accurately sets forth the issue to be decided.

### **CONTRACT PROVISIONS**

The parties' Agreement contains the following relevant provision:

#### **ARTICLE VI OPERATING PROCEDURES**

##### **Section 1 Job Postings**

All new jobs and vacant jobs will be posted on the company's bulletin boards for a minimum of three working days. If a successful bidder is selected, the Company will notify that successful bidder within five (5) working days. The company will place the successful bidder on the job as soon as reasonably possible.

In those instances where employees are considered equal on the basis of an employee's work record, skill, job experience, ability to do the work, length of service will generally be recognized in awarding new jobs and transfers.

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### **BACKGROUND**

The Employer is located in Waunakee, Wisconsin and manufactures contemporary furniture for offices and closet systems. The Union is the recognized exclusive bargaining representative of all employees of the Employer at its Waunakee plant exclusive of management personnel, office employees, salesmen and supervisors not performing work covered by the parties' bargaining agreement.

For the past eight years, James Scheff has been the Employer's Vice-President of Manufacturing and his duties include being plant manager and the overall operation of the Waunakee factory. Since October of 1992, David Lynch has been the Employer's Manager of the Machining Department at the Waunakee plant.

William Klubertanz, hereinafter the Grievant, has been employed at the Employer's Waunakee plant for approximately 20 years and for approximately the last 15 years has been a "Class A" machine operator in the Machining Department. Prior to being a Class A machine operator, the Grievant was a machine operator at a lower classification.

The parties have negotiated wage classifications in the Machining Department beginning with Class AA which are drill operators, Class A, who are machine operators first class, Class B, which includes machine operator second class, and Class C, which includes machine operator third class. The Class AA operators are in charge of and operate the Weeke 1 and 2, Weeke 3, Weeke 6 and BAZ machines, and are the highest paid classification in that department. A number of the machines used are termed "CNC" (Computer Numeric Controlled) and the machine is "programmed" by the operator in that they install the required settings for a particular production run by use of a "Windows" program on the computer. In the Class AA, the Weeke 1, 3 and 6 machines are "CNC" machines. The Class A operators are in charge of and operate the Anton, Schwab, Shelling panel saws, double-edged banders, Friz-Monco press, Wilmsmeyer-Koch, door machine and moulder. At the time in question, the Grievant primarily operated the moulder and door machine, but also operated other machines on an "as needed" basis.

Of the machines in Class A, the Grievant has run the double-edged bander, the Fritz-Monco press, the Wilmsmeyer-Koch machine, the door machine and the moulder. None of those machines are CNC machines. The Grievant has also operated a BP-10 which is a CNC machine in the Class B classification. The Grievant was trained on the BP-10 and operated it for approximately four weeks, but was not the lead operator. The programming on the BP-10 machine is generally not done by the operator. The Grievant had operated the Weeke 1 machine during his first four years of employment and has assisted on the machine at some time in the last two years, and had operated the Weeke 3 machine, but could not recall the last time he had worked on that machine.

In mid-1997 the Company purchased a BP-155 CNC router manufactured by the Weeke Company. The machine is used to produce the panels for a new product, the Atelier, and to drill grommets in desktops, functions previously performed on the BAZ machine and the Weeke 3 machine, respectively.

On September 11, the Company posted the following for the new BP-155 CNC Router position:

TO: All Hourly Employees  
FROM: Dave Lynch/Ken Liebetrau  
RE: Job Opening: Machining Dept.  
DATE: September 11, 1997

Job Opening: Machine Operator - First Class

Classification: Class "A"/First Shift

Job Description: The person selected for this position will be in charge of the new BP-155 CNC Router. This machine will be used to route and bore holes in panels. Responsibilities will include computer programming for set-up, quality control and production.

Qualifications: -Ability to lift and position parts as needed  
-A good work record, including attendance  
-Ability to communicate with other employees  
-Good organizational skills with the ability to anticipate and plan work loads

This job will be posted through September 15, 1997.

The Grievant signed the posting for the BP-155 position. At the same time, the Company also posted a BP-10 position. Both positions were on the first shift, however the BP-10 was a Class B wage classification. The applicants for the BP-155 position were interviewed by Lynch, who also performed the interviews for the BP-10 position. One of the signers for the BP-10 posting was Brett Anderson, a Class AA drill press operator, who was signing for the lower classification job in order to get on the first shift. As a Class AA drill press operator, Anderson had operated the Weeke 3 and Weeke 6 machines, both of which are CNC's, and was able to operate all of the drilling machines. In being interviewed for the BP-10 position, Anderson was asked by Lynch if he was interested in the BP-155 position which was also on the first shift, at which time Anderson signed the posting for the BP-155 job. It has similarly happened in the past that management has approached an employe and asked him to sign a posting where management thinks the employe is qualified. Anderson was awarded the BP-155 position.

As operator of the BP-155, Anderson performs the quality control function on the product being produced and had also performed that function in his former position. The work Anderson now performs on the BP-155 is the same as he had performed on the previous machines he operated as a Class AA drill press operator.

The Grievant, who was not the most senior bidder on the BP-155 position, grieved his failure to be awarded the job. The grievance was processed through the parties' grievance procedure, and being unable to resolve their dispute, the parties proceeded to arbitration on the grievance before the undersigned.

### DISCUSSION

In order to determine whether the Grievant's rights under Article VI, Section 1 of the Agreement have been violated, it is necessary to determine whether the Employer could reasonably consider Anderson to be superior to the Grievant on the basis of work record, skill, job experience and ability to do the work.

Article VI, Section 1, of the Agreement provides, in relevant part:

"In those instances where employees are considered equal on the basis of an employee's work record, skill, job experience, ability to do the work, length of service will generally be recognized in awarding new jobs and transfers."

In this case, the Grievant had 20 years of experience with the Company, whereas Anderson had 10 years, and there is no indication that either employee had anything but a good work record. However, as to skill and job experience, the testimony was that Anderson has been a Class AA drill press operator for as long as there has been that classification, approximately six years, and had operated the Weeke 3 and 6 machines which are CNC's, as is the BP-155. Anderson also testified that the work he does on the BP-155 is essentially the same as he performed on the previous machines he had operated. The programming on the CNC machines normally consists of setting up the distances, the radius, etc. through a "Windows" program on the computer. Lynch, the Manager of the Machining Department, testified that he considered Anderson to be more qualified because of his experience on desktops as a Class AA drill press operator and his CNC experience on the Weeke 1 and 3 machines, whereas the Grievant had not mentioned having any CNC experience when he was interviewed by Lynch. While Anderson had 5 to 6 years' experience on the Weeke machines and commensurate CNC experience, the Grievant could not recall when he had last worked on the Weeke 1 or the Weeke 3 machines, although he had assisted on the Weeke 1 sometime in the last few years, but most of his primary experience on Weeke 1 had been during his early years with the Employer. The Grievant conceded that his CNC experience was primarily with the BP-10 which is a lower-skill class B machine, and that he was not the lead operator on the BP-10. While the posting did not list CNC experience as a "qualification", it did state that, "Responsibilities will include computer programming for set-up, quality control and production." (Emphasis added).

It would appear then, that Anderson's skill as a Class AA drill press operator and his job experience on CNC machines, as well as having performed the same work on those machines as he now performs on the BP-155, provide a basis for the Employer to reasonably consider Anderson superior to the Grievant in those areas, and the Employer could reasonably conclude from that that Anderson would more quickly be able to perform the work than the Grievant. For those reasons, it is concluded that the Employer did not violate Article VI, Section 1, of the Agreement when it awarded Anderson the BP-155 position over the Grievant.

Based on the above and foregoing and the evidence in the record, the undersigned makes and issues the following

**AWARD**

The grievance is denied.

Dated at Madison, Wisconsin this 29th day of May, 1998.

David E. Shaw /s/

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David E. Shaw, Arbitrator

