BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MIDWESTERN INDUSTRIAL COUNCIL
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 2190

and

CUSTOM COMPONENTS COMPANY

Case 2
No. 55772
A-10088

(Pay Grievance)

Appearances:

Mr. Conrad Vogel, Business Representative, Midwestern Industrial Council, Carpenters Union, 1614 Washington Street, Two Rivers, Wisconsin 54241, appeared on behalf of the Union.

Mr. Darrell Graf, Manager, Custom Components Company, 1800 21st Street, Racine, Wisconsin 53403, appeared on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the Company, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing was held on April 27, 1998 in Racine, Wisconsin. The hearing was not transcribed and the parties did not file briefs. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Is the Company violating the contract by not promoting employes in accordance with the contract? If so, what is the remedy?

PERTINENT CONTRACT LANGUAGE

The parties' 1997-99 collective bargaining agreement contains the following pertinent provisions:

ARTICLE II – WAGE RATES

Section 1. Helpers that are hired on a temporary basis shall be paid a wage rate as determined by the Company for the first year of employment. After one (1) year of employment these helpers will as a condition of employment join the Union. Their seniority shall date from the date of hire. After the one (1) year period they will advance to seventy percent (70%) of the semi-skilled full rate of pay.

Two helpers wages are to be determined by the Company. These two helpers will not be eligible for any fringe benefits and also will not be eligible to join the Union.

These employees will perform the following duties: Cleanup, pickup inside and outside of the plant, banding, rack trusses, store and gather nails, minimal maintenance, move carts, snow removal and help unload rail cars. These employees will perform no production or forklift work.

New employees hired as semi-skilled shall be paid not less than seventy percent (70%) of the semi-skilled classification rate.

Employees being paid the seventy percent (70%) rate will be subject to revision every thirty (30) days. This revision period will not exceed one year at which time they will be paid the top of the wage rate range.

Section 2. Job Classification.

Skilled and Semi-Skilled Plus $1.75 Per Hour
Skilled and Semi-Skilled plus $1.75 per hour jobs consist of the following: Roof Truss setup, Floor Truss setup, Wall Layout and one (1) Sawyer for each Component Cutter.

Semi-Skilled
Semi-Skilled jobs consist of the following: Wall Assemblers, Roof Truss Assemblers and Operators, Floor Truss Assemblers and Operators and Saw Operator except the two Component Saws.

Helpers

1. Sweepers, or other clean-up personnel
2. Fork Lift Operators
3. One person to take cut lumber off component saw and stack.
4. Helpers will work on wall line with a Semi-Skilled worker.
5. No more than two (2) helpers per set-up may work on the Roof Truss machine. They may not set up layout or run the Truss Machine.
6. There must be one (1) or more Skilled or Semi-Skilled on the Truss set up, whenever helpers are used. The helpers may not replace any Skilled, Skilled II, or Semi-Skilled help. In case of layoff, seniority will prevail.

When a Semi-Skilled employee is performing skilled work fifty percent (50%) or more of the time he/she will have one dollar and seventy five cents ($1.75) added to their hourly wage. This work must be performed for thirteen (13) consecutive work days. The Company will not move employees off of jobs to evade this contractual language. This classification will not apply when there are twelve (12) or less production employees. Prior skilled employees and employees receiving fifty cents ($.50) above the Semi-Skilled wage rate will retain their current hourly wage rate except for general wage increases. No other employees will be added to the prior Skilled classification.

WAGE RATE

	Effective June 17, 1997	**Effective June 17, 1998**
Skilled	$16.73	$17.23
Semi-Skilled	$13.20	$13.60
Semi-Skilled (Hired before 6/17/88)	$11.41	$11.75
Semi-Skilled (Hired between 6/17/88 and 6/17/92)	$10.30	$10.61
Semi-Skilled (Hired after 6/17/92)	$10.02	$10.32

Illustrations of wage increases that are currently being paid an additional fifty cents ($.50) an hour under previous labor agreements:

	Year 1	Year 2
Current Wage	$11.13	$11.92
Addition	$. 50	x .03
	$11.63	$ .36
	x. 025	$11.92
	$ .29	+.36
		$12.28
	$11.63	
	+ .29	
	$11.92	

Second shift work other than the regular shift, in the first year of the contract shall be paid at the rate of thirty four cents ($.34) per hour above the regular rate of pay. In the second year of the contract this figure shall be thirty seven cents ($.37) per hour.

. . .

ARTICLE IV – SENIORITY

. . .

Section 2. The most senior qualified Semi-Skilled employee shall be promoted to a Semi-Skilled plus one dollar and seventy five cents ($1.75) an hour. This promotion will be in accordance with Article two (2) Section two (2) of this agreement.

. . .

FACTS

The Company is a manufacturer of roof and beam trusses, wall components and floors. The Union is the exclusive bargaining representative for certain Company employes. Employes Fred Starks and Gary Quale are in the bargaining unit represented by the Union.

Starks started working for the Company July 25, 1992. He is currently assigned to the semi-skilled job classification and is paid at the wage rate applicable to those employes hired after June 17, 1992. Quale started working for the Company May 12, 1988. He is also currently assigned to the semi-skilled job classification and is paid at the wage rate applicable

to those employes hired before June 17, 1988. Neither Starks nor Quale is the most senior employe in the semi-skilled job classification.

Each day, supervisors assign work to employes to perform. Since Starks and Quale are in the semi-skilled job classification, they are normally given jobs which have been (contractually) assigned to that classification (i.e. the semi-skilled classification). Some of the jobs which Starks and Quale normally perform are wall assembly, roof truss assembly and floor truss assembly.

In the summer of 1997, Starks and Quale were assigned by their supervisors to perform some set-up work. They do not normally do set-up work. Set-up work is considered skilled work and is normally performed by employes in the skilled and semi-skilled plus $1.75 classifications. The specific details of their assignment to do this set-up work are as follows.

For 15 consecutive days between July 28 and August 15, 1997, Starks was assigned by his supervisor to do set-up work. Starks did this work for the entire day. In doing so, he worked side by side with employes who were in the skilled or semi-skilled plus $1.75 job classifications. Starks did not receive any extra pay for performing this set-up work.

For the 11 consecutive work days that he worked between June 17 and July 9, 1997, Quale was assigned by his supervisor to do set-up work. Quale did this work for the entire day. In doing so, he worked side by side with employes who were in the skilled and semi-skilled plus $1.75 job classifications. Quale did not receive any extra pay for performing this set-up work. Insofar as the record shows, Quale was not assigned set-up work after July 9, 1997.

In September, 1997, Starks filed the instant grievance which contends he is not being paid the correct wage rate. He seeks, via this grievance, to be permanently reclassified to the semi-skilled plus $1.75 classification.

At the hearing, the Union added Quale to this grievance.

POSITIONS OF THE PARTIES

The Union contends the Company is violating the labor agreement by not paying Starks and Quale the correct wage rate. According to the Union, both employes should be in the semi-skilled plus $1.75 classification, not their current semi-skilled classification. The basis for this premise is as follows. The Union notes that in July and August, 1997, Starks did set-up work for 15 consecutive days. The Union also notes that in June and July, 1997, Quale did set-up work for 11 consecutive days. The Union asserts that since these men did set-up work, they should be permanently “promoted” into the semi-skilled plus $1.75 classification. In

order to remedy this alleged contractual violation, the Union seeks to have both employes permanently "promoted" into the semi-skilled plus $1.75 classification, and awarded back pay retroactive to the date the grievance was filed.

The Company contends Starks and Quale are being paid the correct wage rate so no contract violation has occurred. According to the Company, neither employe is entitled to be permanently "promoted" to the semi-skilled plus $1.75 classification because neither employe did skilled work 50% of the time for 13 consecutive days in the summer of 1997. The Company therefore asks that the grievance be denied.

DISCUSSION

My discussion begins with the following introductory comments concerning the applicable contract language and the pertinent facts. Article II (Wage Rates) establishes various job classifications and sets the wage rates for those classifications. The four job classifications are skilled, semi-skilled plus $1.75, semi-skilled and helper. Skilled is the highest paid classification and helper the lowest paid. The employes assigned to these classifications do different work. The various jobs which are performed by the various classifications are specified in detail in Article II. In the context of this case, just one job is important, and that job is what the parties call set-up work. As a result, attention is focused on that job and that job only. Employes in the skilled and semi-skilled plus $1.75 classifications perform set-up work, and employes in the semi-skilled classification do not. Starks and Quale are currently assigned to the semi-skilled classification, so they do not normally perform set-up work as a regular job duty. In the summer of 1997 though, each man was assigned, and performed, some set-up work. Neither man received any additional pay for performing that work. At issue here is whether the two men are contractually entitled to either a permanent pay increase or extra pay as a result of doing set-up work in the summer of 1997. The Union contends that they are whereas the Company disputes that assertion.

In the analysis which follows, I will first address whether the two men are contractually entitled to a permanent reclassification from their existing semi-skilled classification into the (higher-paid) semi-skilled plus $1.75 classification. After that, I will address whether the two men are contractually entitled to any extra pay for doing set-up work in the summer of 1997.

As just noted, attention is focused first on the question of whether Starks and Quale are contractually entitled to a permanent reclassification from their existing semi-skilled classification into the semi-skilled plus $1.75 classification. Based on the following rationale, I conclude they are not. Article IV (Seniority), Section 2, specifies how vacant semi-skilled plus $1.75 positions are filled. Specifically, it provides that: "The most senior qualified Semi-Skilled employee shall be promoted. . ." The plain meaning of this sentence is that if a vacant

position exists in the semi-skilled plus $1.75 classification, it goes to "the most senior qualified semi-skilled employee." In this case, it is not clear from the record whether a vacant position exists in the semi-skilled plus $1.75 classification. However, even if there is, the person who would be contractually entitled to that position would be "the most senior qualified semi-skilled employee." That clearly would not be either Starks or Quale because neither is the "most senior" employe in the semi-skilled classification; someone else is. That being so, it follows that neither Starks nor Quale qualifies for a permanent reclassification to the semi-skilled plus $1.75 classification.

Having so found, attention is now turned to the question of whether the two men are contractually entitled to any extra pay for doing set up work in the summer of 1997. This call obviously turns on the contract language. Many labor agreements contain what is commonly known in labor relations circles as a working-out-of-class provision. Generally speaking, such provisions provide that if an employe performs work in a higher-rated position or works outside their regular classification, they receive extra pay for the time they spent doing so. I read the following two sentences from Article II to essentially be such a working-out-of-class provision:

> When a Semi-Skilled employee is performing skilled work fifty percent (50%) or more of the time he/she will have one dollar and seventy five cents ($1.75) added to their hourly wage. This work must be performed for thirteen (13) consecutive work days.

The first sentence establishes that when a semi-skilled employe does "skilled work fifty percent (50%) or more of the time", they will receive an extra $1.75 per hour. The second sentence establishes a time frame in which the "skilled work" must be done, namely "thirteen (13) consecutive work days." When read together, these two sentences establish three requirements for a semi-skilled employe to get the extra $1.75 per hour: he/she must do (1) "skilled work"; (2) for "fifty percent (50%) or more of the time"; (3) "for thirteen (13) consecutive work days."

The focus now turns to whether Starks and Quale satisfied these three requirements. Since their factual situations differ, they will be reviewed separately.

Starks satisfied all three requirements. The following shows why. First, it has already been noted that he did "skilled work" in the summer of 1997 when he was assigned, and performed, set-up work. Next, when he did this work, he did it for the entire work day, not simply a portion of the day. As a result, he did skilled work for "fifty percent (50%) or more of the time." Finally, he did this work for 15 consecutive work days between July 28 and August 15, 1997. As a result, he satisfied the requirement that the skilled work "be performed

for thirteen (13) consecutive work days." Since Starks satisfied the foregoing three requirements, he was contractually entitled to be paid an extra $1.75 per hour for all the hours that he worked in that 15-day time period. Inasmuch as the Company did not pay him that amount over and above his regular pay, it violated the labor agreement, specifically the provision previously noted in Article II.

Quale however did not satisfy all three requirements. While he satisfied requirements one and two, he did not satisfy requirement three. The following shows why. First, it has already been noted that Quale, like Starks, did "skilled work" in the summer of 1997 when he was assigned, and performed, set-up work. Next, when he did this set-up work, he did it for the entire work day, not simply a portion of the day. As a result, he did skilled work for "fifty percent (50%) or more of the time." However, he did not do this work for the required number of days. Specifically, he did it for just 11 consecutive days and the contract mandates that it has to be 13 consecutive days to get the extra $1.75 per hour. Thus, he failed to reach the magic number of 13. That being so, he does not contractually qualify for any additional pay for the time he spent doing set-up work in June and July, 1997.

The Union implies that the reason why the Company pulled Quale off set-up work on what would have been his 12th consecutive day was simply to avoid having to pay him the higher rate. A contention of this type can be proved by showing a pattern of conduct. For example, if the record evidence had shown that Quale performed set-up work for 12 consecutive days, then was pulled off that work for 1 day, then was reassigned to do set-up work again for 12 consecutive days, and then was pulled off that work again for 1 day, that pattern of conduct would be sufficient to prove a violation of the sentence in Article II which provides: "The Company will not move employees off their jobs to evade this contractual language." Here, though, proof of such a pattern is lacking. Insofar as the record shows, Quale did not do set up work again after July 9, 1997. Thus, all the record shows is that Quale did set-up work for 11 days in June and July, 1997. The fact that he was not assigned set-up work on what would have been his 12th consecutive day does not, in and of itself, establish a contract violation. More proof is required. That being the case, the Union has not proved that the reason the Company pulled Quale off set-up work on what would have been his 12th consecutive day was simply to avoid having to pay him the higher rate.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

The grievance is denied in part and granted in part. The grievance is denied in that employes Starks and Quale are not contractually entitled to a permanent reclassification from their existing semi-skilled classification into the semi-skilled plus $1.75 classification. The

grievance is also denied in that Quale is not contractually entitled to any extra pay for doing set-up work in June and July, 1997. The grievance is granted in that Starks is contractually entitled to extra pay for doing set-up work in July and August, 1997. Specifically, he is entitled to an additional $1.75 per hour for all the hours that he worked in the 15-day time period between July 28 and August 15, 1997. The Company violated the contract when it failed to pay him an extra $1.75 per hour for those hours. In order to remedy this contractual violation, the Company shall pay Starks that amount.

Dated at Madison, Wisconsin this 16th day of July, 1998.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

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