

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL 75

and

LEICHT TRANSFER AND STORAGE

Case 1

No. 58002

A-5801

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., P.O. Box 12993, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin, by **Ms. Andrea F. Hoeschen**, on behalf of the Union.

Davis & Kuelthau, S.C., 414 East Walnut Street, Suite 240, Green Bay, Wisconsin, by **Mr. Dennis W. Rader**, on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "Company", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Green Bay, Wisconsin, on December 17, 1999. The hearing was transcribed. The parties there agreed that I should retain my jurisdiction if the grievance is sustained.

Subsequent to the close of the hearing, the Union moved to introduce new evidence relating to the Company's December 22, 1999, unilateral transfer of grievant Mark Allen from warehouse 70 to a forklift operator's position in warehouse 72 and its assignment of a dock manager to warehouse 70. Over the Company's objection, I received that evidence. Thereafter, both parties filed briefs and reply briefs that were received by May 16, 2000.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties agreed to the following issue:

Did the Company violate the contract when it refused to pay grievant Mark Allen foreman's pay and, if so, what is the appropriate remedy?

BACKGROUND

The Company operates a number of warehouses in Green Bay, Wisconsin, including warehouses 70, 71 and 72. The dispute here centers on whether grievant Allen should have received foreman's pay when he worked at warehouse 70, a new building that was opened up in 1999.

Randy Carpiaux, now retired, served as the working foreman in Warehouse 70 from March, 1999 until May 28, 1999. (Unless otherwise stated, all dates herein refer to 1999). Carpiaux became foreman after he successfully bid for the following job posting (Union Exhibit 1):

...

This posting is for a foreman who will be assigned to Warehouse #70, Packerland Drive, and will perform all duties associated with that location.

This bid will be awarded to the senior qualified warehouse person signing below. The company shall retain the right to qualify, which shall include testing candidates on the skills necessary to perform the job.

The successful bidder will be paid a 75 cent (\$.75) per hour premium in addition to any shift differential. Shift hours may vary.

There is no six-month requirement to work in this position.

This posting will be removed at 8:00 a.m. on Tuesday, March 23, 1999, and will become effective as soon as possible thereafter.

...

Carpiaux testified that he saw a similar posting in warehouse 70 several weeks before he retired.

As a foreman, he received an additional 75 cents an hour pursuant to Article XV of the contract. He testified that he was responsible for loading and unloading trucks; for preparing a "space report" on how much empty space remained in the warehouse; for answering his cell phone 4-5 times a day to talk to customers; for meeting customers about once a week; for maintaining time reports and other paperwork, and for sometimes directing another employee.

On cross-examination, he testified that there was no scanning equipment in warehouse 70 when he worked there; that he never worked with bar codes; that none of his paperwork was computerized when he worked there; that only foremen carried cell phones; and that he never was in charge of determining which trucks went to warehouse 70 or to any other location.

Grievant Allen – who has been a warehouse employe for about 30 years and who formerly worked in warehouse 66 - bid for, and received, the following posting even though it referred to another warehouse location:

...

P & G CONTINUOUS OPERATION

This posting is for four additional forklift operators, one per crew, to work at Donald Street in a continuous operation for the new P & G account.

Two forklift operators are needed for each of the following:

DAYS	6:00 a.m. to 6:00 p.m.
NIGHTS	6:00 p.m. to 6:00 a.m.

The night shift shall be paid a 50 cent (\$.50) per hour minimum.

All employees, including those currently on probation, are eligible to post for these positions. The bids will be awarded to the four senior qualified warehouse persons signing under each heading, DAYS or NIGHTS. The company shall retain the right to qualify.

There is no six-month requirement for forklift operators accepting these positions.

This posting will be removed at 8:00 a.m. on Tuesday, April 20, 1999. Training for the P&G operation will begin as soon as possible thereafter.

...

Allen began working in warehouse 70 on June 1 and testified that he is responsible for coordinating “all activities at warehouse 70” by knowing what doors to send trucks to, by making sure they are loaded properly, and by preparing all the necessary paperwork. He added that he works with another employe about half of his time; that he now uses a scanner to

replace the paperwork he formerly performed; that he uses a cell phone to contact customers “Daily”; that he sometimes deals directly with customers in warehouse 70; that he faxes over bills to the dock manager or customer relations; that he must call the dock manager at warehouse 71 or 72 every time a truck is unloaded; that he assigns seal numbers to every truck; and that, “These are all jobs that are performed at the other location by foremen or dock managers.”

He also said that he did not receive foreman’s pay before computers were installed at warehouse 70; that he previously received foreman’s pay for about five years at other warehouses where he worked; that he talks to the dock managers about 25 times a day; and that he does monthly “bug reports” which keep track of vehicle maintenance.

On cross-examination, he stated that his work at warehouse 70 is “Very parallel, yes” to his work at warehouse 66; that unlike warehouse 66, he is not responsible for railroad contacts at warehouse 70; that he did not use a computerized system at warehouse 66; that only foremen carry a cell phone on a full-time basis; that only dock managers or foremen assign seals; that when he served as foreman in warehouse 66, he was not responsible for coordinating loads or trucks between warehouses 66 and 97; that even though dock managers can easily assign trucks to particular warehouse doors, “he doesn’t do it”; that the Company’s continuous operation first came into effect in April; that no other warehouses are computerized the way warehouses 70-72 are computerized; and that no locations have both a dock manager and foreman.

Steven Banker, who supervises the Company’s operations, testified that the Company’s “working alone” policy (Company Exhibit 8), requires all employes like Allen, who often work alone, to carry a cell phone; that bargaining unit employes carry phones for that reason; that warehouse 66, where Allen formerly worked, operates differently than warehouse 70 in part because it uses manual paperwork, rather than a computerized system; and that a prior grievance (Company Exhibit 7), was filed over the elimination of a foreman’s position in warehouse 85, but that it was subsequently dropped. On cross-examination, he said that warehouse 70 is one of the biggest warehouses and that it has three telephones.

Customer Service Manager Marianne Baeb testified that dock managers are only found in warehouses 70, 71 and 72, which are devoted exclusively to Procter and Gamble, one of the Company’s biggest customers; that the dock managers there assign the trucks “to where he wants to load the product”; that when the Company implemented its continuous operation in April for its Procter and Gamble operations, it went from 6 to 8 dock managers; that all three warehouses have computers so operators can scan the product and produce a bill of lading in the dock manager’s office; that the computers in warehouse 70 went online in the first part of July, 1999; and that Carpiaux’s former foreman position was not posted when he retired in May because “the entire warehouse was full of P & G” products and because all activity was

therefore directed through warehouses 71 and 72 which use the identical computer system as the one now found in warehouse 70. She added that “the distribution of the work assignments that is dock manager only. And coordinating all documents with customer service.” She added that no seals are used for shuttle loads and that but for the first four items listed therein, forklift operators perform all of the duties in the dock manager’s position profile (Joint Exhibit 15).

On cross-examination, she stated that there is no job description for the foreman’s position and that dock manager functions are never performed at warehouse 70.

POSITIONS OF THE PARTIES

The Union claims that the Company under Article 4, the Maintenance of Standards clause, “had no right” to eliminate the foreman’s position at warehouse 70 and that even if it did, it in fact did not eliminate the duties of that position which Allen continued to perform, which is why he should receive the 75 cents an hour differential pursuant to Article 15 entitled “Wages and Hours”. The Union also claims that Allen’s foreman status is reflected by the fact that there was a foreman (Carpiaux), at warehouse 70 before he took the job and that there was a dock manager there after he was unilaterally transferred from warehouse 70 to another warehouse days after the instant hearing was concluded.

The Company, in turn, contends that the work performed by Allen “is not foreman work as performed by other foremen in the bargaining unit”; that his work is “most similar” to other non-foremen; that because of the computer system in warehouses 70-72, dock managers now perform work formerly performed by foremen; and that Allen’s testimony is not credible. The Company also argues that the Maintenance of Standards clause at Article 4 is inapplicable and that its assignment of a dock manager to warehouse 70 after the hearing “has no bearing” on the issue herein.

DISCUSSION

Contrary to the Union’s claim, I find that the Company’s actions herein did not violate Article 4 of the contract, entitled “Maintenance of Standards”, which provides:

The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum of standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved where ever specific provisions for improvement are made elsewhere in this Agreement.

No employee shall suffer a reduction in pay if required to take a job with a lesser scale. Any employee who takes a job with a higher rate of pay shall receive that scale while performing that type of work.

This language does not prevent the Company from making any changes in its operations. It, instead, only prevents the Company from making any unilateral changes involving “conditions of employment relating to wages, hours of work, overtime differentials and general working conditions. . .” Absent any other express language in the contract to the contrary, this means that the Company is free to exercise its inherent managerial prerogative to either abolish positions or to not fill vacant ones. See *How Arbitration Works*, Elkouri and Elkouri, p. 723 (BNA, 5th Ed., 1997). Hence, the Company under Article 4 was not required to fill Carpiaux’s foreman position after he retired in May.

That, though, is a separate question of whether the Company, after Carpiaux’s retirement, continued to assign foreman duties to Allen. If it did, Allen is entitled to foreman’s pay under Article 15 which states in pertinent part: “All Foremen and Dock Managers will be paid a seventy-five (\$.75) per hour premium for all hours worked or paid.” If it did not, Allen is not entitled to the 75 cents an hour differential he seeks.

There is a sharp testimonial conflict over this issue with Allen claiming, and Banker and Baeb both denying, that he performed foreman duties when he took over that job on June 1. Rather than addressing each piece of this testimonial conflict, it suffices here to state that but for the changes brought about by the new computerized system in warehouse 70 and the advent of the Company’s continuous operations for Procter and Gamble, Allen at the time of the hearing was performing the same basic duties formerly performed by former foreman Carpiaux – i.e., he was responsible for loading and unloading trucks; for preparing space reports; for answering his cell phone to talk to customers; for meeting customers, and for sometimes directing another employe. In addition, Allen assigned seals for non-shuttle trucks – a chore that is only performed by foremen and dock managers. In other words, Allen – like Carpiaux – was responsible for operating the warehouse.

The advent of computerization and the continuous operation did not change that. They only affected the means by which Allen performed his record-keeping functions. They did not affect his overall responsibility for running warehouse 70 in the absence of a foreman or dock manager.

While the Company asserts that Allen’s testimony should not be credited, I find no basis for doing so. As a result, I credit his testimony about his job duties and conclude that he performed a foreman’s core duties. Hence, it is my

AWARD

1. That the Company violated Article 15 of the contract when it refused to pay grievant Mark Allen foreman's pay.

2. That as a remedy, the Company shall immediately pay Allen an additional 75 cents an hour for all the time he worked in warehouse 70.

3. That to resolve any questions that may arise between the parties over application of this Award, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin this 26th day of July, 2000.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

