

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL 695

and

RAYOVAC CORPORATION (PORTAGE PLANT)

Case 175

No. 59939

A-5932

(Seniority Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Mr. Nathan D. Eisenberg**, on behalf of the Union.

Foley & Lardner, by **Mr. Michael H. Auen**, 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 Portage, Wisconsin, on August 7, 2001. The hearing was transcribed and the parties filed briefs that were received by October 4, 2001.

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

ISSUE

The parties have stipulated to the following issue:

Did the Company violate Article 21, Section 5, of the contract when it laid off grievants Troy Henning, Dennis Dorn, and Dan Shutts out of order of seniority and, if so, what is the appropriate remedy?

BACKGROUND

The Company's Portage, Wisconsin, plant manufactures and/or produces lithium cell batteries and zinc air batteries. (The dispute here is limited to the lithium batteries and all references hereinafter refer to the lithium batteries.) The cell batteries are made on cell make equipment and some cell batteries subsequently have tabs added to them in a separate area of the plant called autoweld or value added. This allows the tabbed batteries, which are much more expensive than regular batteries, to be precisely placed in circuit boards. There are about 13 large autowelder machines that perform this added tab function.

The Company in March, 1999, moved the production of lithium batteries from its Appleton plant to its Portage plant. That, in turn, led to considerable difficulty and various production problems which took some time to resolve. Hence, the Company has become very concerned about the quality of the tabbed batteries and how well its machinists can produce them.

Traditionally, some machinists only work on the cell make, some only work on the autowelds, and still others work on both cell make and autoweld. Thus, Todd Hugget, Tim Frey, Troy Henning, Dennis Dorn and Don Shutts worked on cell make; C. Walter, D. Pudrowski, and Pat Pejskar only worked on autoweld or value added; and Scott Jones, Jim Light, Val Jaksic and John Pejskar were cross-trained and could work on both cell make and autoweld.

As related below, the Company in February, 2001, laid off grievants Dorn, Henning and Shutts and retained the other mechanics.

Union Steward John Jerome, an electrical technician, testified that changeovers occur when the size of a battery changes on cell make or tabs are changed on autoweld; that machinists regularly work on changeovers; that changeovers are difficult to perform; that he has never filled out Product Change Checklists; and that work orders are always filled out.

On cross-examination, he said that he has never held a mechanic's position at the plant; that some changeovers have taken two weeks; that he does not know how much time it takes to do an autoweld changeover; that there is no separate classification in the contract for cell make mechanics and autoweld mechanics; and that while there is a "learning curve" in moving from cell make to autoweld, mechanics can do so because "the basic knowledge is still there." He also said that after he went to the Appleton plant, he trained "both mechanics and technicians in cell make" for the Portage plant and that he did not train mechanics for autoweld.

Grievant Henning, a mechanic II, started employment on August 25, 1999, as a mechanic I even though the Company offered to hire him in the higher mechanic II classification. He was working on cell make when he was laid off on February 15, 2001, (unless otherwise stated, all dates hereinafter refer to 2001), and he testified that he sometimes worked on value added; that he performed mechanical changeovers on the value added machines “four or five times”; and that he did so alone on two occasions. He said that his request to be cross-trained was denied by his supervisor because “we were so busy. . .”; that he “very often performed changeovers on cell make”; and that he is skilled to do a changeover on value added.

On cross-examination, Henning testified that he received cross-training from Pat Pejskar for value added in the last two weeks of his employment and that he personally performed two changeovers on his own. He also said that he never filled out a Product Change Checklist form for the value added changeovers (Company Exhibit 7), and that he still needed more training for value added changeovers.

Carol Kuhnau, the lithium products manager, testified about the difficulties encountered at the Portage plant after the Appleton plant closed. She said that the autowelder is “going to be set up to place the tabs to the exact location. . .” and to set up the proper calibrations; that the Company builds its own autowelder machines internally without any manuals; and that changeovers for the autowelds formerly took too long and were too expensive. She replied, “Oh, absolutely not” when asked whether cell make mechanics can transfer to autowelder and vice-versa without added training, and said that lower production needs necessitated the February, 2001 layoffs.

She said that certain employees were laid off because:

The operating mode was one shift of cell make which we had five trained cell make mechanics. We had two shifts of this value added, which we had three value added trained mechanics. We had four trained mechanics with dual skill sets that could function in both equally well. Out of the five trained cell make mechanics, we only required two. We only needed two on first shift. That meant three cell make mechanics would be laid off.

She explained that the Company maintains records called “Product Change Checklists”, showing whenever changeovers occur; that the Product Change Checklists (Company Exhibit 7) show that Henning never performed any changeovers between June, 2000 – February 13, 2001; and that Henning did work on value added. She said that Henning was laid off “Because he had not received the proper training that the other people had received. He was not – he could not effectively do a changeover or had not performed a changeover on his own.” She added that her conclusion was based on the “supervisor’s input and by the

documentation that we required for each changeover”, and that the changing production needs dictated that there be more, and not fewer, changeovers. She also said a mechanic would need between 2 and 4 months to be properly trained in cell make and 2 to 6 months on value added.

On cross-examination, Kuhnau testified that, “The key decision in making the layoff was that we had five cell make mechanics, and we only required two”, and that proper documentation and a supervisor’s knowledge determined whether a person has certain skills. She stated that it “looks like three people were involved in a changeover” in mid-February (Company Exhibit 7), including mechanic Jones who did so with the help of other personnel on February 12 and February 13. She also said that it looked like mechanic Light performed changeovers in January, 2001, and that “once they had performed the changeover, they had the skill. I did not say they had to show that skill for two months. I said it could take two to six months to learn that skill.”

On re-direct, she testified that she did not know whether Jones worked on changeovers on the same shifts as Pudrowski and Walter; that they could have worked on different shifts; and that the changeovers on February 12 and 13 took multiple dates and that more than one mechanic worked on them. She added that some autowelder changeovers can be done in a day and that a poor set-up can “hinder production for shifts afterwards.”

Third Shift Production Supervisor Herb Maier testified that in February, Jones, Pudrowski, and Walter worked on the third, second and first shifts.

Lithium product manager Doug Kortbein testified about the training needed before a mechanic can do a changeover. He said a mechanic normally teaches another mechanic on how to do a changeover; that most changeovers take more than one day; that it normally takes “many months, six months typically” before a mechanic can be fully proficient in performing a changeover on his/her own; and that Henning probably could not learn how to do a changeover in two weeks. On cross-examination, he said that engineers, not mechanics, design the machines; that product change checklists are not always signed; and that mechanics may sign-off even though they have not done all of the steps.

POSITIONS OF THE PARTIES

The Union claims that the Company violated Article 21, Section 5, of the contract because Henning and Dorn were qualified to work on changeovers; that their “relative ability was relatively equal” with that of Jones, Jaksic and Light; and that the Company therefore has failed to meet its burden of proving that the junior employees retained over them were substantially more qualified. The Union thus contends that the Company’s “reliance on the dual skill set as the sole basis for determining layoffs was arbitrary and capricious”; that the Company “grossly overstates the period of time necessary to become proficient as a mechanic

in value added”; and that the Company erred by relying on documentary evidence that is of “dubious validity”. As a remedy, the Union asks that Henning and Dorn should be reinstated to their former positions and be made whole. (Since the Union’s brief does not ask for Shutts’ recall apparently because he in any event is less senior than any other mechanic, his situation is not discussed below.)

The Company, in turn, contends that it “was permitted to retain mechanics out of seniority” and “that those retained had better qualifications” than Henning and Dorn. It thus claims that there is no proof in the Product Change Checklists that Henning ever performed changeovers.

DISCUSSION

This case turns on whether the Company has met its burden of proving that Henning and Dorn were not qualified to perform changeovers pursuant to Article 21, Section 5, of the contract which states:

Section 5. Skilled Group (Schedule B) Employees – Layoff and Recall

Skilled group employees (those persons employed in classifications listed in Schedule B) will be laid off with consideration of factors such as job performance and ability to insure an effective operation. Such considerations being equal seniority shall govern, and employees within the affected classification will be laid off in accordance with their seniority within the classification (those employees with the least classification seniority being laid off first). The Company shall have the burden of proof of substantiating each deviation. (Emphasis added).

The skilled group employee(s) laid off may, if they have sufficient plant wide seniority, be placed in the production unit. The Company will assign the skilled employee to a production job based on Article 21, Section 3. Skilled group employees who are assigned to a production job will maintain their recall rights to their former skilled classification for a period of up to two (2) years from the date they are assigned to a production position.

If the skilled group employee(s) laid off does not have sufficient plant wide seniority to be placed into the production unit the employee will be laid off. However, prior to layoff the employee must execute a waiver indicating whether or not he desires to obtain recall rights based on plant wide seniority to a production job. If he desires such right, he will be placed on the production recall list and be given one opportunity. If the employee declines the one

opportunity he shall lose all seniority rights. If he waives his right to be placed on the production recall list, he shall preserve recall rights only to a skilled group classification.

In agreement with the Company, I find that the Company under this language had valid business reasons for laying off mechanics in February, 2001, and that the Company at that time could lay off mechanics who could not perform changeovers because it has the inherent managerial right to establish its “dual skill set.”

This finding is based on lithium products manager Kuhnau’s uncontroverted testimony that changing production needs at that time necessitated the closing down of a cell make production line and that the Company needed trained mechanics to perform changeovers because it did have the time to train them at the time of the layoff.

This case therefore boils down to two disputed factual questions: (1), how long does it take a mechanic to be properly trained for changeovers; and (2), did Henning have sufficient training and skills so that he could do changeovers on his own at the time of his layoff?

As to question (1), Kuhnau testified that it takes between 2 and 4 months of training to be proficient on cell make and 2 to 6 months on value added. Product manager Kortbein testified that it takes “six months, typically” before a mechanic can be fully proficient in performing a changeover on his/her own. If this were true, the grievance would have to be denied because it is just too unreasonable to demand that the Company must retain employees who need all that time before being fully proficient in doing changeovers.

Here, though, Henning testified that he on his own had worked on two changeovers on the value added machines after he worked on about two other changeovers with Pat Pejskar right before his layoff. If he did work on four separate changeovers, he could have had the same or similar skills as some of the junior employees who were retained, which means that he should not have been laid off.

The Company attacks Henning’s claim by pointing out that none of the Product Change Checklists refer to him; that no supervisor ever okayed his work; and that Pat Pejskar only worked on one changeover between January-February, thereby discrediting Henning’s claim that he and Pat Pejskar worked on several changeovers together. The Company thus argues that it must be assumed that Henning did not work on any changeovers on his own. If the Product Change Checklists were always accurate, this argument would carry the day and the grievance would have to be denied for the very reasons advanced by the Company.

However, Jerome testified without contradiction that he has never filled out Product Change Checklists and, more importantly, Kortbein acknowledged on cross-examination that the Product Change Checklists are not always signed. Hence, it is entirely possible that Henning worked on changeovers just as he said, even though he never signed off on the Product Change Checklists. That is why it is also possible that Pat Pejskar worked on more than one changeover and why he could have trained Henning. Absent any stronger proof by the Company in support of its claim that Henning never worked on changeovers, I credit Henning's testimony that he did so.

The record also indicates that while some changeovers are very complex and that they may require several months of training, that is not always the case. Thus, Jones – who had a class seniority date of January 22 - could only have received several weeks of possible training before he worked on changeovers right before Henning's layoff. This supports the Union's claim that Henning only needed the same amount of time before performing two changeovers on his own right before the layoff.

This record is therefore murky as to just how much training is needed to perform all and/or some changeovers and whether the Company's records properly document who works on all of the changeovers. While such an unclear record in many cases would dictate the denial of a grievance because of a union's failure to prove that a laid-off senior employee was just as qualified as a junior employee who was retained, the Company under Article 21, Section 5, of this contract bears the burden of proving the "deviation" as to why Henning was less qualified than more junior employee Jones.

Since Jones had a class seniority date of January 22, and since he only worked on two changeovers between February 12 and 16 (Company Exhibit 7), the Company has not maintained its burden of proving that Henning could not have done those changeovers. After all, if Jones learned how to do them in less than a month, why is it that Henning also could not have done that work? The Company does not offer any reasonable answer to this critical question.

I therefore conclude that the Company has failed to meet its burden of proving that Jones was more qualified than Henning. I also find, however, that the Company has met its burden of proving that Dorn was properly passed over because he was not as qualified as the other mechanics who were retrained at the time of his layoff.

In order to rectify the Company's violation of Article 21, Section 5, the Company shall immediately offer to Henning his former position and it shall make him whole by paying to him all benefits, including seniority, that he would have earned from the time of his layoff to the time of his reinstatement, offset by any monies he received that he would not have received but for his layoff.

In order to resolve any questions that may arise over application of this remedy, I shall retain my jurisdiction for at least sixty (60) days. The Company at the hearing objected to my retention of jurisdiction, but I conclude that I should do so here for the reasons I spelled out in SUPERVALU, INC., AND DRIVERS, WAREHOUSE AND DAIRY EMPLOYEES, LOCAL 75, 114 LA 677 (2000).

In light of the above, it is my

AWARD

1. That the Company violated Article 21, Section 5, of the contract when it laid off grievant Troy Henning, but that it did not do so when it laid off grievants Dennis Dorn and Dan Shutts out of order seniority.

2. That to rectify the Company's improper layoff of grievant Troy Henning, it shall make him whole by undertaking the remedial action stated above.

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

Dated at Madison, Wisconsin, this 11th day of January, 2002.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

