BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BSA / LB&B JOINT VENTURE

and

MACHINISTS LOCAL LODGE 1115 OF DISTRICT LODGE 66, IAMAW

Case 3
No. 69151
A-6383

Appearances:

District Lodge 66, IAMAW, 1307 Market Street, La Crosse, Wisconsin 54601, by **Mr. Rick Mickschl,** Directing Business Representative, appearing on behalf of Machinists Local Lodge 1115.

Wyrick, Robbins, Yates & Ponton, LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina 27607-7506, by **Ms. Jennifer Miller**, Attorney at Law, appearing on behalf of BSA/LB&B Joint Venture.

ARBITRATION AWARD

On August 31, 2009, Machinists Local Lodge 1115 (hereinafter referred to as the Union) and BSA/LB&B Joint Ventures (hereinafter referred to as the Employer or the Company) jointly requested the appointment of Daniel Nielsen as arbitrator of a dispute concerning the Company's order of layoff for employees at Fort McCoy, Wisconsin in July, 2009. A hearing was held in La Crosse, Wisconsin on December 8, 2009, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The hearing was transcribed and a transcript was prepared. The parties submitted post-hearing briefs, which were exchanged through the undersigned on March 8, 2010. The Union objected to the content of the Company's post-hearing submission. The Union was granted an additional two weeks to respond. The two week period expired on March 24, 2010 whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUES

Did BSA/LB&B violate the Collective Bargaining Agreement in determining the order of employees to be laid off in the July, 2009 layoffs? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 3 - MANAGEMENT RIGHTS

Section 1. Except as specifically limited or modified by the provisions of this Agreement, the Company has and shall retain the exclusive right of management of its operations and the direction of its employees including, but by no means limited to, the right to plan, train, direct, and control all Company operations and the employees assigned thereto; to maintain order and efficiency; the right to hire, schedule and assign job duties, approve vacation time usage, suspend, layoff, promote, demote, transfer, discipline, and discharge employees; to adopt, amend, and enforce work and safety rules and procedures, including drug and alcohol policies: to determine the number of hours per day or per week: to increase, decrease, or discontinue operations in whole or in part; to determine the job classifications and qualifications of employees assigned thereto: to establish and enforce standards for the quality and quantity of work required to be performed in all jobs; the right to determine what work and functions in the Company's business will be performed by independent contractors, and to require overtime work to fulfill necessary contract requirements.

The foregoing enumeration of the Company's rights shall not be deemed to exclude other preexisting rights or customary functions of management which do not conflict with the provisions of this Agreement.

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ARTICLE 9 – SENIORITY

Section 1. Seniority for purposes of this Agreement shall represent an employee's total unbroken length of service with the Company, including continuous service with a predecessor contractor. Job classification seniority is defined as the total unbroken length of service an employee acquires in a particular job classification. In the event two (2) or more employees have the same seniority date, the most senior employee will be determined by using the employees' last four (4) digits of the employees' social security number with the most senior being the employee with the highest number.

Section 2. Full time employees are in a separate seniority group, part-time employees in another separate seniority group, and seasonal employees in another separate seniority group. Each seniority group is independent of the others. Employees moving from part-time to full time status, or vice versa, will obtain a new full time or part-time seniority based upon the effective date of the change. The parties recognize the unique circumstances surrounding the employment of seasonal employees. The seasonal employees' seniority is exclusively for the purpose of determining the sequence of laying off and recalling employees as work is available.

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Section 5. The Company shall prepare and maintain, subject to examination and correction by Union representatives, the following Company seniority lists:

a. Full time employees
b. Part-time employees
c. Seasonal employees

Each list shall be dated and specify the employees name, job classification, and date of hire. Each list shall be in descending order from the most senior to the least senior employee. The stewards and Business Representative shall be provided with a copy of each list. Employees shall have the right to protest any error they believe exists in a seniority list. An updated copy of the seniority lists shall be provided to the Stewards and the Business Representatives every six (6) months.

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ARTICLE 10 - REDUCTION IN FORCE

Section 1. In the event a reduction in force shall become necessary because of a lack of work or other justifiable reasons, the Company will first seek volunteers for a reduction in force before laying off employees. It is understood that volunteers may not necessarily be selected for a layoff. If an additional reduction is necessary, probationary employees will be laid off first and thereafter part-time employees. If a further reduction is still necessary, full-time employees will be laid off by job classification in accordance with their seniority. Those employees with the least seniority being the first to be laid off.

An affected laid off employee may bump an employee with less seniority in another job classification, provided that he/she successfully occupied that job classification. Employees must notify the Company within three (3) work days of their intention to exercise their bumping rights.

It is understood that Stewards shall have seniority over all employees they represent during a reduction in force, provided work in their classification or work in classifications wherein they have a displacement right is available, and so long as the Steward's duties would permit such seniority preference under existing law.

Section 2. Recall rights are effective for a period of twelve (12) months from the day of layoff or reduction in force. The Company will send the notice of recall by registered mail to the employee's last known address as indicated on Company records. Recalled employees must respond within five (5) work days after receipt of notification, and must report for work within ten (10) calendar days of notification. Failure to comply with the provisions of this Article shall be considered a voluntary resignation.

Section 3. Probationary employees shall have no recall rights.

Section 4. Seasonal employees are laid off and recalled for work by job classification and in accordance with their seniority within their separate seniority group.

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ARTICLE 12 – GRIEVANCE PROCEDURE

Section 1. A grievance is defined as a dispute involving the interpretation or application of a provision of this Agreement.

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The arbitrator shall not have the authority to add to, subtract from, modify or alter any of the terms of this Agreement. The arbitrator shall limit his decision to the interpretation of the Agreement and to a settlement of the particular grievance under consideration.

The arbitrator's decision shall be final and binding on both parties. Expenses and preparation of their case shall be borne by the party calling their witnesses and the preparing their case. Any filing and processing fees required by the AAA shall be paid by the party requesting arbitration. The expenses associated with a place for holding the hearing shall be shared equally between the parties. The expenses for the arbitrator shall be paid by the non-prevailing party to the arbitration.[1]

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[1] The parties submitted this matter to the Wisconsin Employment Relations Commission rather than the AAA for arbitration.

ARTICLE 25 DURATION

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Section 2. Any modifications or supplements to this Agreement, to be effective, must be reduced to writing and executed by proper representatives of each party. The provisions of this Agreement are mandatory and may be waived only by written agreement of the parties. No party may be deemed to have waived any provisions of this Agreement unless there is a written statement acknowledging such waiver and signed by the parties who are asserted to have waived the provisions.

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STATEMENT OF THE CASE

Background

The Company is joint venture under contract to the military to provide logistical support at Fort McCoy, Wisconsin. The Company succeeded VT Griffin Service, Inc. as the vendor in 2008 as the consequence of competitive bidding. The Union is the exclusive bargaining representative of, among others, employees of the vendor in the Department of Public Works at the Fort. The bargaining unit was first organized in 2007, when Griffin was the vendor, and the first collective bargaining agreement was negotiated between the Union and Griffin. That contract included a provision for reductions in the work force, calling for the Company to seek volunteers, who would be laid off first if the Company concurred. If the number of acceptable volunteers was not sufficient, the contract called for probationary employees to be laid off, then part-time employees, and then full-time employees "by job classification":

> … In the event a reduction in force shall become necessary because of a lack of work or other justifiable reasons, the Company will first seek volunteers for a reduction in force before laying off employees. It is understood that volunteers may not necessarily be selected for a layoff. If an additional reduction is necessary, probationary employees will be laid off first and thereafter part-time employees. If a further reduction is still necessary, full-time employees will be laid off by job classification in accordance with their seniority. Those employees with the least seniority being the first to be laid off.

The contract further provided for super-seniority for Stewards:

> … It is understood that Stewards shall have seniority over all employees they represent during a reduction in force, provided work in their classification or work in classifications wherein they have a displacement right is available, and so long as the Steward's duties would permit such seniority preference under existing law.

When the Company took over for VT Griffin, the parties negotiated a Bridge Agreement to apply to the new vendor. The only change made in the layoff provision was to shorten the period of recall rights from 18 to 12 months. The Bridge Agreement went into effect when the Company formally took over on October 6, 2008.

The Department of Public Works is broken into two work groups – Buildings and Structures, and Roads and Grounds. The former is primarily a building maintenance operation, employing trades, and the latter is primarily a grounds maintenance operation, employing Heavy Equipment Operators and Truck Drivers. The distinction between the two work groups is not reflected in the seniority provisions of the collective bargaining agreement.

In the early summer of 2009, Steve Tower was hired as the Project Manager. Shortly after he started, he met with the Garrison Commander, who complained bitterly about what he perceived as a lack of grass mowing and the poor appearance of the grounds. Tower conferred with the corporate offices about the Commander's complaints, and he was directed to layoff 4 of the 6 Heavy Truck Drivers and 1 of the 2 Heavy Equipment Operators, and replace them with five grass cutters.

The layoff notices were sent to employees on July 9th but word of the layoffs spread in the unit before that time. On July 7, Union Business Representative Rick Mickschl sent an e-mail to the Company's Labor Relations contact, Tim Fischer, asking that he be given advance notice of layoffs in the future. Mickschl also pointed out that the Heavy Equipment Operator who had been given notice of layoff was the Union Steward, and that the contract called for him to be the last person laid off. In follow-up e-mails, he raised the question of whether probationary employees and part-time employees were being retained, noting the contract language calling for probationary employees to be laid off before part-time, and part-time to be laid off before full-time.

Fisher responded by characterizing the change as a reorganization of the Roads and Grounds work group, eliminating 4 Heavy Truck Driver positions and 1 Heavy Equipment Operator, since those jobs were not needed in the summer. He noted that none of the probationary or part-time employees were in the classifications affected by the layoffs. Fisher argued that the Heavy Equipment Operator who was being retained was actually a Lead Heavy Equipment Operator, and that that was a different classification. The characterization of it as a Lead position was based on that particular employee's certification as a rail inspector. One of the Company's duties at Fort McCoy is to inspect the eight miles of rail lines used to move men and material through the Fort. Their contract with the military, like VT Griffin's, requires a Certified Railroad Track Inspector for this task.

Mickschl replied the following day, observing that the collective bargaining agreement did not contain any Lead Heavy Equipment Operator classification and that, while the layoff provision called for full-time employees to be laid off by classification, it said nothing about layoff by classification when addressing the layoff of part-time and probationary employees

before full-time employees. Fisher pointed out that the layoff of probationary and part-time employees from other classifications – HVAC Mechanic, General Maintenance Worker, Plumber, Seasonal Tractor Operator - would not prevent the layoffs, since the Truck Driver and the Equipment Operator positions would still not be needed. The layoffs were implemented over the Union's objections. The instant grievance was thereafter filed challenging the retention of probationary and part-time employees, and the layoff of the Union Steward. It was not resolved in the lower stages of the grievance procedure and was referred to arbitration.[2]

At the hearing, in addition to the facts recited above, the Union presented testimony from Rod Hoffman, who was the Union's principal spokesperson in negotiating the Bridge Agreement and the previous agreements with VT Griffin. Hoffman noted that the vendor took over responsibility for railroad track inspection in about 2003, at which time Brooks and another employee were trained for the job and certified as inspectors. In the contract negotiations with VT Griffin after the Union was certified, Hoffman suggested that a new classification should be established for the inspector position, but the company refused. The basis of the refusal was the structure of VT Griffin's contract with the government, which would not reimburse them for a different classification but would reimburse for having a Heavy Equipment Operator perform railroad inspections.

Steward Marlin Julson testified that he had been laid off from his Heavy Equipment Operator position, while Daniel Brooks was retained. Accordingly to Julson, in 2003 Brooks was sent to Louisiana for two weeks of training in how to perform inspections, and since that time had spent a "good majority" of his time performing inspection work. He noted that he filled in for Brooks while he was away at training in 2003, but that the Company never offered him training or asked if he could do the job.

Project Manager Steve Tower testified that he retained Brooks because Brooks' job was different than that of the regular Heavy Equipment Operator. While Brooks spent a portion of his time doing regular Operator work, he spent at least half of it performing railroad inspections, which is a different and specialized skill set. The inspection work requires technical knowledge and expertise on how to identify and repair problems with the track, and the contract with the military requires certification as an inspector for this job. Tower said he did not know that Julson had filled in for two weeks in 2003 while Brooks was being trained, because he worked from the employee's personnel files and that was not reflected in the file. He offered the opinion that Julson's two weeks of experience in 2003 was not comparable to Brooks' status as a certified inspector with six years of experience.

[2] After the grievance was filed, three of the five laid off employees applied for and received Seasonal Truck Driver positions. The contract has separate seniority lists for full-time, part-time and seasonal employees. Per the contract, in accepting seasonal work, they forfeited their recall rights as regular full-time employees.

Timothy Fischer testified that when the Company took over from VT Griffin, employees were required to apply for their positions, and that Brooks submitted an application for "Lead Railroad Track Inspector", and listed that as the position he had filled with VT Griffin. Fisher noted that Brooks' personnel file contained performance evaluations noting his classification as Heavy Equipment Operator, but noting that his main job was as the certified track inspector.

Additional facts, as necessary, will be set forth below.

Arguments of the Union

The Union argues that Article 10, Section 1 provides the order of layoff for any reduction in force of the bargaining unit, does so in unambiguous terms:

- First, volunteers, then
- Second, probationary employees, then
- Third, part-time employees, then
- Last, full-time employees, *by classification*

The contract draws no distinction between the Buildings shop and the Roads shop. It makes no distinction between a layoff caused by a "reorganization" and one for any other reason. It does not distinguish between a Heavy Equipment Operator with a railroad inspector's certification and one without such certification. It makes no mention of using classification as the basis for laying off probationary and part-time employees, only full-time employees. In short, the contract does not recognize any of the distinctions being drawn by the Company, and it does not contain any of the language the Company imputes to it. Under the contract as it is actually written, all of the probationary employees and all of the part-time employees should have been laid off before any full-time employee. Likewise, the Union Steward should have been the last Heavy Equipment Operator laid off. Since part-time and probationary employees continued to work after full-time employees were laid off, and since another employee continued to perform Heavy Equipment Operator work after the Steward was laid off, the Company violated the collective bargaining agreement. The arbitrator should therefore grant the grievance and order the laid off employees made whole.

Arguments of the Company

The Company observes that the Union bears the burden of proof, and argues that it cannot and did not carry that burden in this case. The Union contends that the Company must layoff part-time and probationary employees site-wide before it may layoff full-time employees in the specific classification affected by a layoff. That is absurd and pointless. If the Company has no need for a full-time Heavy Equipment Operator, forcing the layoff of employees in other classifications that are needed will not result in the retention of that employee. He or she will still be unneeded. All that will happen is that ten employees will be laid off instead of five, and the five in the needed classifications will immediately be recalled.

The contract calls for full-time employees to be laid off by classification, but it is silent as to whether probationary and part-time employees should be laid off by classification. It is likewise silent as to how employees are recalled, other than to describe the process of notification and the period of recall rights. In the face of that silence, the contract should be interpreted in a sensible and coherent manner. It makes no sense whatsoever to lay off skilled trades, or a tractor operator who is responsible for cutting grass - the need for which led to the reorganization - in order to reach the unneeded employees. The Company would simply exercise its right to recall the needed workers from an illusory layoff. To require that sequencing of notices of layoff and notices of recall is to elevate form over substance. It accomplishes nothing.

Turning to the issue of the Steward, the Company asserts that it has the right to retain the services of the only employee who is qualified to inspect the rail system at the Fort. The contract with the government requires that this critical service be provided, and requires that it be performed by a Certified Railroad Track Inspector. Julson, the Steward, is not certified, while Brooks is certified. While both are classified as Heavy Equipment Operators, their actual work is wholly different, and these are in every practical sense, two different classifications. Over fifty percent of Brooks' work day is devoted to inspection work. This requires specialized knowledge that Julson simply does not possess. While he filled in on the job for two weeks while Brooks was away receiving certification training, that took place six years before this grievance arose, and says nothing about his current level of qualifications. Indeed, the Union itself once suggested a separate classification for this job, a suggestion that was not acted upon solely because of how the reimbursements worked under the VT Griffin contract with the government. Brooks' job is as a Railroad Inspector, who performs some Heavy Equipment Operator work. The arbitrator must recognize that this misclassification of the position should not trump the operational needs of the military and the vendor.

Mr. Julson cannot perform the available work in the position. Mr. Brooks can perform the work. He possesses unique skills, and the Company submits that it was entitled to recognize this fact in determining the order of layoff.

ANALYSIS AND DECISION

Two aspects of the 2009 layoffs are in dispute. First, the Union challenges the Company's decision to retain probationary and part-time employees while laying off full-time employees. Second, the Union claims that the Steward, Marlin Julson, should have been retained in the classification of Heavy Equipment Operator over Daniel Brooks. These issues are addressed in turn.

Retention of Probationary and Part-time Employees

The arbitrator's role is to discern the intent of the parties. The first reference point in that exercise is the language used. The familiar rule is that clear language is to be applied as written, while ambiguous language must first be interpreted to determine the parties' intent. Contract language is clear and unambiguous where it will sustain only one meaning, and where no reasonable argument can be made for any other meaning.

Here, the Union argues that Article 10 is clear and unambiguous, in that it sets forth the order of layoff, and does so without any qualifying language regarding the probationary and part-time employees. The Union's argument is that the layoff of full-time employees is qualified by the phrase "by job classification…", but that the preceding layoffs of probationary and part-time employees are not qualified in that fashion, and thus must be unit-wide, rather than by job classification. That is a reasonable implication, but it *is* an implication. The contract does not explicitly say that part-time and probationary layoffs are to be unit-wide. It is silent on the point, and thus ambiguous. The Union's assertion that the parties know how to say "by job classification" when that is what they intend is a powerful argument in favor of such an interpretation, but it is not the only reasonable interpretation, and it poses several very significant problems.

If the inclusion of qualifying language in the reference to full-time layoffs means that those qualifications are not applicable to probationary and part-time layoffs, there is a question as to just how the part-time layoffs are to be accomplished. The Union's argument focuses on only a portion of the qualifying phrase. The full qualifying phrase is "by job classification in accordance with their seniority. Those employees with the least seniority being the first to be laid off." If this language applies only to full-time employees, and its absence in the preceding sentence means that it does not apply to part-time employees, is the implication then that part-time employees are not to be laid off in seniority order when the reduction in force does not require all part-timers to be laid off? That would be inconsistent with the fact that a separate part-time employee seniority list is maintained, and with the normal purposes of seniority in collective bargaining agreements. Yet if the Union is correct about the implication of the phrase "job classification" being placed in the portion addressing full-time employees, it must follow that the use of seniority is likewise segregated and applies only to full-time employees.

The contract is also silent as to the order of recall. It speaks to the provision of notice and the duration of recall rights, but says nothing about the circumstances in which a recall will take place, or which employees will be recalled and in what order. The Company points to this and argues that it could immediately recall laid off probationary and part-time employees while leaving the full-time employees laid off. That is one possible interpretation of the silence – that recall is made to available work by inverse order of layoff. If that is the case, the Union's theory of the layoff provision would have no integrity or coherence. The act of laying off the probationary and part-time employees would be an empty exercise. However, if it is not the case, and if instead all full-time employees would have to be recalled before any part-time or probationary employees could be employed, all hiring would be frozen so long as any full-time employee remained on layoff. Any new hire in any classification would, by definition, be a probationary employee. In a case such as this, where the Company decides to eliminate positions without any prospect of reinstating them, the practical effect would be a freeze on new positions and on the replacement of any employees who have left, for the 12 months during which the full-time employees have recall rights.

While it is possible to make the Union's interpretation of the contract work on the front end of the process – the layoff of employees – the recall of employees under the Union's interpretation is difficult to envision. Either employees would be recalled to available work, in which case the layoff of probationary and part-time employees would have been meaningless, or no hiring of part-time or full-time employees could take place for a year, in which case the Company would be forced to either subcontract, use seasonal employees or stop providing services to the base. Each of these latter results would undercut the security of the part-time and full-time employees in the bargaining unit, contrary to the general purposes of the seniority provisions.

The other possible interpretation of the language of Article 10 is that the qualifying phrases "…by job classification in accordance with their seniority. Those employees with the least seniority being the first to be laid off…" are intended to explain the process of layoff generally, in each of the groups. Admittedly this is a more strained reading of the language as structured, but it would result in a coherent system of layoff and recall across the diverse classifications of the bargaining unit.

There is no evidence of past practice, bargaining history or other actions by the parties in applying this language. The meaning is purely dependent on the structure of the Article and the results of the competing possible interpretations. The structure of the Article supports the Union's view. The parties placed the qualifying language in the portion applying to full-time employees, and not in the preceding two sentences applicable to probationary and part-time employees. However, the practical effect of accepting the Union's interpretation is to deny part-time employees the benefit of seniority in determining the order of layoffs, and to create a recall system that either renders the layoff of part-time and probationary employees a nullity, or provides strong incentives for the Company to go outside the bargaining unit for needed services whenever there is a full-time employee on layoff. These are not impossible results, and if there was direct evidence that that was how the parties intended their system of layoff and recall to work, I would conclude that the order of layoff is as described by the Union. There is no such direct evidence, and given the very unusual results flowing from the Union's interpretation, I conclude that the Company did not violate the collective bargaining agreement by using classification seniority to determine the order of layoffs in the summer of 2009. That portion of the grievance is therefore denied.

The Layoff of the Steward From the Heavy Equipment Operator Classification

The contract grants super-seniority to the Stewards, in order to insure proper administration and enforcement of the contract in the face of layoffs. The retention of the Stewards is not completely unqualified. The Steward's duties must permit super-seniority under the law, and there must be work available in the classification or in a classification the Steward can bump into:

> It is understood that Stewards shall have seniority over all employees they represent during a reduction in force, *provided work in their classification or work in classifications wherein they have a displacement right is available*, and so long as the Steward's duties would permit such seniority preference under existing law. [Emphasis added]

Bumping requires prior experience in the other classification, and Steward Marlin Julson had no experience in other classifications, and thus no ability to bump. Daniel Brooks, the other full-time Heavy Equipment Operator, was retained, while Julson was laid off.[3] The Company's basis for retaining Brooks was his certification as a Railroad Track Inspector. The vendor is required to provide inspection services for the railroad track on the base, and the Company's contract with the military demands that the work be performed by a certified inspector. At least half of Brooks' working time is spent on inspection duties, and the balance is filled by the traditional duties of a Heavy Equipment Operator. The issue between the parties is whether there was work remaining in the Heavy Equipment Operator classification which would have prevented Julson's layoff.

The position remaining after the layoffs was 50% or more railroad track inspection, with the remainder being traditional Heavy Equipment Operator work. The parties have classified the overall position as a Heavy Equipment Operator, but both acknowledge that the railroad track inspection aspect of the job is well outside of what would normally be considered operator work. The Union initially raised the possibility of a different classification with VT Griffin, but the then-employer declined because of the reimbursement requirements of the contract with the military, which would not have covered a separate Inspector classification. The classification remained an Operator, and this was carried forward into the Bridge Agreement when the Company took over the contract at Fort McCoy.

Clearly, there is still work in the Operator classification, in that Brooks continues to do traditional Operator work for up to half of his time. Just as clearly, the other work performed by Brooks cannot be performed by Julson. While he did the job for two weeks in 2003 when Brooks was away being certified, there is no evidence that he has performed it at any time since. The Company presented evidence that the inspector job is primarily knowledge-based, in that the inspector must know what to look for, understand what he is seeing, and know how to fix it. Moreover, the requirement is not simply that an inspector be provided. It is that a certified inspector be provided, and Julson is not certified to perform railroad inspections.

Julson can perform a portion of the job occupied by Brooks, but cannot perform the inspection work that he himself characterized as taking a "good majority" of the time. The question then is whether work in the Operator classification is, in any real sense, available. The work that is within Julson's qualifications and training, would constitute 50% or less of an

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[3] Julson elected not to apply for any of the seasonal positions that subsequently came open, because doing so would have forfeited his recall rights to a full-time job.

Operator's position. One theoretical possibility would be to say that Julson is entitled to that work, and Brooks may retain the inspection work. The problem with splitting the job into its component parts is that it would create two part-time positions. Not only would that result run afoul of the language regarding part-time employees not being retained within a classification where full-time employees are on layoff, it would force both Julson and Brooks to forfeit their full-time seniority and start over on the part-time employees' seniority list.[4] For this reason, I conclude that it is not contractually possible – absent agreement of the parties to a waiver of the seniority and reduction in force provisions – to divide the available work.

The contract contains a single classification for Heavy Equipment Operator. Yet the parties have knowingly allowed a position to exist within that classification that is a hybrid of Operator and the specialized position of Certified Railroad Track Inspector. The Inspector duties are not incidental to the position – they constitute at least half and probably more than half of the job. Nor are they in any way an extension or refinement of the Operator's normal duties – they are distinct, and require skills and training that would not normally be obtained by an Operator. When Brooks was evaluated by VT Griffin, he was evaluated as if he filled a hybrid position, and his performance was rated on the basis of his Inspection duties. When he applied for the job with the Company, he applied for a hybrid position - "Lead Railroad Track Inspector" – and he listed that on the application as his former position with VT Griffin. Given the mutual acquiescence of the parties in the creation of this de facto hybrid classification, and the practical impossibility of splitting off the duties for which Julson is qualified, I am forced to conclude that there is no work available within Julson's classification, and that the Company did not violate the collective bargaining agreement when it laid him off, notwithstanding his role as the Steward.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

BSA/LB&B did not violate the Collective Bargaining Agreement in determining the order of employees to be laid off in the July, 2009 layoffs. The grievance is denied.

Signed this 17th day of June, 2010 at Libertyville, Illinois.

Daniel J. Nielsen /s/
Daniel J. Nielsen, Arbitrator

[4] Article 9, §2 provides in part: "Employees moving from part-time to full time status, or vice versa, will obtain a new full time or part-time seniority based upon the effective date of the change."

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