BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CONSTRUCTION AND GENERAL LABORERS' UNION LOCAL 464

and

MID-STATES CONCRETE PRODUCTS COMPANY

Case 15
No. 71701
A-6523

Appearances:

David Seely, Director of Human Resources, Mid-States Concrete Products, 500 South Park Avenue, South Beloit, Illinois, 61080, appearing on behalf of Mid-States Concrete Products.

Corey McGovern, Business Manager, Construction and General Laborers Union Local 454, 1438 North Stoughton Road, Madison, Wisconsin, 53714, appearing on behalf of Laborers' Local Union No. 464.

ARBITRATION AWARD

This dispute was submitted to arbitration and a hearing was held on August 22, 2012 in South Beloit, Illinois. The employer, Mid-States Concrete Products Company (hereinafter Mid-States) is engaged in the manufacture and installation of pre-stressed hollowcore concrete slabs as well as concrete beams, columns and wall panels used in the construction industry. It is a party to a collective bargaining agreement with Laborers' Local Union 464 (hereinafter "Union"). The Union represents employees working in the manufacturing phase of the business. The size of the bargaining unit varies from 30 to 80 employees. Bargaining unit employees are classified as either "skilled laborers" or "journeyman". This dispute arises out of the seniority clause as it applies to layoffs, recalls and "extra work". The operative provisions of the agreement are found in Article IV and provide as follows:

ARTICLE IV. SENIORITY

Section 1. Seniority rights shall prevail at all times during the life of this Agreement provided ability and skill are reasonably equal.

. . .

> Section 3. In laying off employees because of a reduction in forces, the employees with the least seniority shall be laid off first provided that those remaining are capable of carrying on the Employers usual operations effectively. In re-employing, those employees with the greatest length of service shall be called back first provided they are capable of performing the available work.
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> . . .
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> Section 5. Seniority shall prevail when extra work is available; provided, however, the employee has worked all regularly scheduled hours during the week or has excused absences for hours missed. If a particular job is customarily performed by a particular employee, he shall have the first opportunity to perform said extra work.

The grievants, Joe A. Rodriguez and Rafael Carbajal, have seniority dates of January 3, 2004 and July 8, 2004 respectively. The Union, on their behalf asserts that on Thursday, May 24, Friday, May 25, and Tuesday, May 29 they were on layoff status when more junior employees were working. For ease of reference I shall refer to this as the "holiday layoff". They also assert that the same thing occurred on Friday, June 15.[1] Additionally the grievants were not called in to work on Saturday, June 2 or Saturday, June 9. I will refer to this issue as the "Saturday work" dispute.

On all six days employees Travis Hill (seniority 11/22/04) and David Aldape (11/21/05) were working. They had, and apparently continue to, work on a special project which is somewhat different than the work being performed by the grievants. The special project requires the removal by grinding of hundreds of studs from the concrete slabs. Hill and Aldape have been working on the project for several months and have acquired some proficiency in doing so. At the time of the first of the disputed incidents they had been doing the work for about two weeks. The special project work involves the use of a hand held grinder and hand held drills, neither of which are used on normal production work. Hill and Aldape were trained by the company to perform the work in question.

From the company's perspective the special project work is skilled work that required training and supervision. In the union's view, the work is simply routine labor that anyone could perform with ten minutes of training.

As noted above, this dispute is really about two separate contract provisions. The first is easier to resolve and that is the Saturday work question. The contract language regarding "extra work" (which is overtime work) provides that seniority will prevail in the assignment

[1] The company acknowledged an error occurred on June 15 and it is clear that grievants were given an extra day of work to compensate for the layoff on June 15. That day is considered resolved.

subject to two exceptions. First in order to be eligible for overtime work an employee must have worked all regularly scheduled hours during the week or had excused absences. Secondly seniority will not apply if the "particular job is customarily performed by a particular employee, he shall have the first opportunity to perform said extra work."

In this case the extra work performed by Hill and Aldape on June 2 and June 9 was special project work that they had been performing. It is clear under the "extra work" language that the Company was entitled to continue to use the less senior employees on those dates because they had previously been performing the particular job. The grievants have no claim under the contract to this work on the dates in question.

The issue with regard to the holiday work is much closer. Leading up to the Memorial Day holiday three-day shut down, the Company found it necessary to begin to wrap up operations necessitating the layoff of regular employees Carbajal and Rodriguez on the Thursday and Friday preceding the holiday weekend and, conversely, the slower start up following the weekend resulted in layoff on Tuesday, May 29. The nature of concrete work required the ramp down and ramp up before and after the three day shutdown. Hill and Aldape were not laid off and continued to work on the special project on May 24, 25 and 29.

Both parties argued their respective positions based upon Section 3 of Article IV. In my judgment this sub section is not applicable to a short-term layoff. The language references a "reduction in forces" and "re-employment" following the reduction. That language suggests the parties intended to apply this section to long-term layoffs and subsequent re-employment of laid off workers. The grievants were told they were off work for three days and were instructed to return to work on Wednesday, May 30. These short term layoffs simply are not reductions in force. Given that Section 3 is not applicable, the operative and controlling provision is Section 1 which provides that seniority controls in cases where employees' "ability and skill are reasonably equal." Based upon the evidence presented I conclude that both grievants had the ability and skill to perform the special project tasks on May 24, 25 and 29. Accordingly the company violated the contract on those dates when they laid off the grievants and retained junior employees.

I credit the testimony of Leadman Mendiola, that the training period for learning the special project grinding and drilling was relatively short. No doubt at the end of May the two junior employees were better able to perform the work in question on the three days at issue. The contract does not, however, allow the company to bypass the seniority provisions in short-term layoff situations based upon who can do the job most effectively. As long as the more senior employees possess the "reasonably equal" skill and ability they get to perform the job over the more effective but junior workers.

AWARD

The grievance to the extent it alleges a violation of the contract regarding the employment of less senior employees to perform "extra work" on June 2 and June 9 is denied. The grievance as to the employment of junior employees on June 15 is dismissed as moot. The grievance is sustained as to the employment of junior employees on May 24, 25 and 29. The Company is directed to pay grievants Rodriguez and Carbajal an amount equivalent to the normal pay they would have received on May 24, 25 and 29, 2012.

Dated at Madison, Wisconsin this 11th day of September, 2012.

James R. Scott /s/

James R. Scott, Arbitrator

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