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Résumé de l'article

A reduction of the working force means a reduction in any part of the working force, and is not to be limited to a reduction of the total number of employees.

Shawinigan Chemicals Limited and Le Syndicat des travailleurs en produits chimiques de Shawinigan, Montreal, January 16, 1961, pp. 1-23. H. D. Woods Arbitrator.

JURISPRUDENCE DU TRAVAIL

REDUCTION OF THE WORKING FORCE, DEFINED

A reduction of the working force means a reduction in any part of the working force, and is not to be limited to a reduction of the total number of employees. [1]

Clause 803 which will be examined first reads as follows:

> « In the event of reduction in the working force, employees having no seniority rights with the Company shall, in the first place, be laid off or separated. If this reduction in the working force extends further, the employees having seniority rights shall, by order of seniority, be placed on leave of absence. First in his division, an in any other division later, except for Resins Division, no matter his occupation or trade, seniority shall prevail in favor of any employee who has more seniority so as to permit him to displace of his occupation or trade an employee having less seniority unless the employee with more seniority cannot fulfil the normal requirements of the occupation or trade concerned. »

. . . In approaching the task the arbitrator has relied as far as possible on the literal meaning of two words of the agreement and has only been influenced by the « intentions of the parties » to the extent that the wording of clauses in dispute is apparently open to differing shades of meaning; or to the extent that other clauses may reveal that certain clearly defined intentions would render one of the contended interpretations of the clauses in dispute inconsistent or ridiculous . . .

EVALUATION

. . . The issue in simplest terms is this; does a reduction in the working force mean a shrinkage of the total number of employees at work or does it mean that in a part of the operation jobs are discontinued so that an employee faces either unemployment or reallocation elsewhere? The latter meaning must be accepted as being logically consistent with other sections of the agreement, with sensible industrial relations and administration, and indeed with prevailing internal practice as revealed by company witnesses.

When the parties agreed to Clause VIII, they made it quite clear that a person exercising seniority rights would have to be able to fulfil the normal requirement of the job to which he aspired. In other words there was shown a clear acceptance of the principle that the standard was to be satisfactory performance, not the most satisfactory work. While this does not specifically clarify the meaning of a reduction of the work force, it does establish a mutually accepted standard which is to

(1) Shawinigan Chemicals Limited and Le Syndicat des travailleurs en produits chimiques de Shawinigan, Montreal, January 16, 1961, pp. 1-23. H. D. Woods Arbitrator.

be preserved in the exercise of certain seniority rights when a work reduction takes place. It strongly suggests that an interpretation of « working force » reduction which would permit the company to set aside this standard on behalf of another, such as the best qualified worker, was not intended.

Secondly, the clause obviously intended to grant to the employee exercising bumping rights, the privilege of taking the job of an employee of less seniority as long as the aspiring employee could fulfil the normal requirements. This would therefore mean that the employee so exercising these rights could have a right to the highest level job for which he was qualified. Again, while it does not specifically establish the meaning of reduction in the work force, it does establish that the parties intended to grant to employees protection, under certain circumstances, of their acquired skills. But under the employer's interpretation, such protection could be withdrawn simply by ensuring that not job was closed out except when at the same time another job was being expanded. This would give the Company a manipulative power which could largely eliminate the whole procedure of bumping provided for in the second part of clause 803.

Thirdly, the Company's argument that the purpose of clause 803 was merely to guarantee that the more senior employee would be assured of remaining at work while the employee with less seniority would be placed on leave of absence, or the employee with no seniority separated, is inconsistent with the above and also with clause 822 which reads as follows:

> « If the responsibilities or the normal requirements of an occupation are substantially modified, the interested employee may apply his seniority rights, in his division, to another occupation for which he may meet the normal requirements. If the modifications brought to this occupation are cancelled or if this occupation is again described according to the requirements judged reasonable, the interested employee may apply his seniority rights to return to his occupation. »

It will be observed that by this clause an employee facing a *change* in his job content may exercise certain bumping rights based on seniority and qualification; yet on the Company's interpretation of clause 803, the same employee faced with not merely a change in job content, but the elimination of the position, could only exercise these same bumping rights if it happened that the total work force was reduced on that particular day. The two provisions would be quite inconsistent in principle. This would produce the kind of absurdity suggested in the Company's final brief.

Fourthly, the practice as revealed by certain Company witnesses supports the union interpretation. Thus Mr. Murphy, Assistant Superintendent Carbide Division, testified quite clearly that the questions of leave of absence or layoff notice and reduction are handled within the division.

> « When we have reduce personnel we consider the number of men we have to reduce. We take the seniority of the men into consideration. We put them on leave of absence if these men have seniority or we lay off those who do not have seniority. If there is a shortage of work, on Friday we give a six day notice to the employee that after six days there will be no work in the division. With regard to the man without seniority, he can be given lay-off without any time notice. He is separated.

> « Suppose we have to put on leave of absence five men in the furnace room; we look at seniority; if there are others in our division with less seniority we would let out these junior men and give their jobs to any of the five men who are senior. We get in touch with the Personnel Department who tell us which are the least senior men in the Division. Suppose the surplus is in the furnace room, the five will be moved out but the five junior men in the Division will go. »

This testimony shows a practice at variance with the Company's interpretation. Mr. Murphy obviously looks upon the closing down of five furnace jobs as a reduction in the working force; he recognizes the right of senior men to take jobs of less senior men in the Division, and makes *no* reference to the total work force; the Personnel Department becomes involved only to the extent that it supplies information on seniority . . .

AWARD

A reduction of the working force is to be interpreted as meaning a reduction in any part of the work force, and is not to be limited to a reduction of the total number of employees. The clause gives protection to both their employment and their level of employment. When an employee is confronted with the closing out of the job he has held, a reduction of the work force is taking place.

BINDING AUTHORITY OF A PREVIOUS AWARD TRIAL PERIOD DENIED

> *The arbitrator of the same agreement has no authority to reverse or alter it in a subsequent case. An employee, in order to fulfil the normal requirements of his job, has no right to a training period.* [1]

CLAUSES 813 AND 803

These clauses are taken up together because the 813 clause is relevant to the interpretation of the final part of clause 803.

The Company asks the arbitrator if under 813 there is an implication of a trial period if necessary, or an implication of a trial period alone.

Clause 813 reads as follows:

> « The normal requirements of a job are in direct relation with the work to be done and with its execution in a reasonably acceptable way; any employee who observes the conditions fulfils the normal requirements of his job. »

. . . Under clause 905 arbitration is extended to cover, among other things, cases involving « interpretation » of provisions of the agreement, The Gauthier-Grenier case involved interpretation of clause 813 and 803. In that instance the union claimed the right to training for an employee exercising his rights under 803. But since it was agreed that 803 and 813 must be considered together, the Award de-

(1) *Ibid.*, pp. 9-11.