

IN THE MATTER OF THE ARBITRATION BETWEEN

UNITED STEELWORKERS, LOCAL 1259,)	FEDERAL MEDIATION AND CONCILIATION SERVICE CASE NO. 14-51099
)	
)	
Union,)	
)	
and)	
)	
ROCK-TENN CP LLC,)	DECISION AND AWARD OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On March 13, 2014, in St. Paul, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to award a vacant position to the grievant, Michelle M. Hart. Post-hearing written argument was received by the arbitrator on April 19, 2014.

FACTS

The Employer manufactures corrugated packaging at many locations throughout the world. In North America, it operates 210 plants, where it employs about 26,000 people. Two of the Employer's plants are in the Metropolitan area that includes Minneapolis and St. Paul, Minnesota -- one in Minneapolis (hereafter, the "Minneapolis Plant" or sometimes, merely the "Plant") and one in Roseville, a suburb of St. Paul (hereafter, the "St. Paul Plant"). The Union is the collective bargaining representative of most of the employees of the Employer who work in production, maintenance and shipping classifications at the Minneapolis Plant. Employees who work in similar classifications at the St. Paul Plant are represented by a different local affiliate of the United Steelworkers.

The Minneapolis Plant has produced corrugated packaging for many years and has been owned by several predecessors to the Employer before the Employer purchased it in May of 2011. The Union has also had many predecessors as the collective bargaining representative of employees in classifications now represented by the Union. The labor agreements between the preceding owners of the Plant and those preceding unions have many provisions that have continued without change since the first such agreement, which became effective in 1973.

The current labor agreement between the parties is, by its terms, effective from March 1, 2011, through March 1, 2015. The following provisions from that agreement are relevant to resolution of the present grievance:

Section 17.1.1. New employees shall be regarded as temporary employees until after they have served a probationary or trial period, and shall not be placed upon the seniority list or be entitled to any seniority until after they have been in the Company's employ for sixty (60) working days. . . .

Section 17.1.4. Qualifications and seniority shall be determined as follows:

1. Seniority shall date from the first day of uninterrupted employment, except in the case of rehires from temporary layoffs, when date of first employment shall control.
2. Qualifications are to be determined by the Company on examination of the employee's record.

Section 17.2.6. Permanent Job Vacancy: When a vacancy occurs, notice of vacancy will be posted for three (3) working days. It is understood that the Company will post for a job vacancy as soon as the vacancy is known. Any employee wishing to apply for the vacancy must sign the posted notice within the posting time limit. In the event there are two or more applicants and qualifications are equal, plant seniority shall prevail. An employee selected to fill a vacancy shall be given up to twenty (20) working days to qualify for [the] vacant position.

On September 17, 2013, the Employer posted a "Job Bid Notice" for a vacant position on its second shift as a "Shipping Fork Lift" operator at the Minneapolis Plant. Six people who were then employed there signed the posting, showing they were "currently interested in this position." The parties agree that the primary function of the vacant position is to operate a fork lift truck in the Shipping Department of the Minneapolis Plant.

Below, I set out the names of the bidders, their current seniority rankings and the dates when their employment at the Minneapolis Plant began:

- | | |
|--------------------|-------------------|
| 1. Kenneth O'Mara | March 24, 1994 |
| 2. Michelle Hart | May 25, 2007 |
| 3. Theresa Muta | November 28, 2007 |
| 4. Raul Guadarrama | August 21, 2012 |
| 5. Tim Kanrowski | May 18, 2013 |
| 6. Joe Petrangelo | August 1, 2013 |

Earnest P. Bischoff, Jr., testified that he has been employed at the Minneapolis Plant for thirty-four years in several classifications. He is currently a Vice President of the Union and has held many other Union offices, including that of President. He testified that the text of Section 17.1.4 has been in the labor agreement since 1973, though it was then numbered as Section 17.1.3.

Jeffrey C. Jorgenson, the Minneapolis Plant Superintendent, testified as follows. When he began the selection process to fill the vacancy at issue, he asked the applicants about their experience in operating a fork lift truck. When he asked the most senior applicant, Kenneth O'Mara, about his fork lift experience, O'Mara told him that he had no experience operating a fork lift truck and said he was no longer interested in the position.

Jorgenson asked the grievant, who was the second most senior of the bidders, if she had experience operating a fork lift truck, and she told him she did not. The grievant testified that Jorgenson asked about her experience only in a passing conversation as he was walking by her while she was working. The grievant testified that she has been a licensed driver of automobiles and trucks for many years and has a good driving record. She also testified that she has never driven a fork lift truck and does not have a license to do so -- though she has operated a pallette jack, equipment not used in the Shipping Department. Jorgenson testified that when he talked to Theresa Muta, the third most senior of the bidders, she told him she was no longer interested in the position.

Jorgenson told Bischoff that he wanted to select Petrangelo, who had previous experience in many jobs at the St. Paul Plant, but Bischoff objected to Petrangelo's selection because Petrangelo, whose employment at the Minneapolis Plant started on August 1, 2013, was still a probationary employee.

Jorgenson testified that, when he interviewed the fourth most senior bidder, Raul Guadarrama, who eventually was awarded the position, Guadarrama told him that he had several months experience at the St. Paul Plant operating a clamp lift truck, which is similar to a fork lift truck, but is larger and uses a clamp rather than a fork to engage the materials to be lifted. Just before Guadarrama was awarded the fork lift operator's position at issue, his job was that of a press helper. Jorgenson selected Guadarrama for the position, judging him to be more qualified than the grievant because of his experience operating a clamp lift truck at the St. Paul Plant.

On September 30, 2013, the Union initiated the present grievance in behalf of the grievant. The grievance alleges "violation of past practice agreement and any other provision of the [labor] Agreement that may be found to apply" and that "a transfer employee's prior seniority was wrongfully interpreted and he was awarded the 2nd shift forklift driver position over more senior applicants." The evidence and argument clarify this statement as follows:

1. The "transfer employee" referred to is Guadarrama.
2. The Union does not allege that Guadarrama's service at the St. Paul Plant was added to his service at the

Minneapolis Plant, thereby improperly increasing his seniority rank.

3. Rather, the Union alleges that Guadarrama's experience operating a clamp lift truck at the St. Paul Plant was considered when Jorgenson judged his qualifications to be better than those of the grievant and that consideration of such outside experience was improper when determining qualifications.

On November 7, 2013, John Oellrich, Minneapolis Plant Manager, issued a written response to the grievance, stating that "Raul clearly has more skill/qualifications than the other employees applying for the position." He cited Sections 17.1.4 and 17.2.6 of the labor agreement.

DECISION

The primary issue presented is whether the Employer violated the labor agreement by awarding the vacant position to Guadarrama, who had less seniority than the grievant. The following sentence from Section 17.2.6 of the labor agreement establishes the standard for selection:

In the event there are two or more applicants and qualifications are equal, plant seniority shall prevail.

The Employer selected Guadarrama because he was considered to be more qualified for the fork lift operator's position than the grievant. The chief reason for considering him more qualified than the grievant was that he had several months experience operating a clamp lift truck at the St. Paul Plant, while the grievant had no experience operating a fork lift truck or a clamp lift truck. Subparagraph 2 of Section 17.1.4 provides:

Qualifications are to be determined by the Company on examination of the employee's record.

The Union argues that, in determining the qualifications of an applicant for a vacant position, the Employer should not use as a basis for that determination the experience a bidder has obtained at another plant. Bischoff testified as follows about previous cases in which predecessors of the Employer have proposed to use an applicant's experience at another plant in determining qualifications for a vacant position. About nine or ten years ago, an issue arose whether a probationary employee bidding for a vacancy could be judged qualified based on experience at another plant. The Union objected to selection of that applicant for the vacant position, and the preceding operator of the Minneapolis Plant conceded that, by force of Section 17.1.1, a probationary employee has no seniority and, therefore, cannot meet the seniority criterion established for selection under Section 17.1.4 -- that a successful bidder must have both seniority and qualifications.

In addition, Bischoff testified that in at least three instances the Employer's predecessors have conceded that, because a probationer has no seniority, he or she cannot be selected for a vacancy despite having qualifying experience at another plant -- unless no applicant with seniority has applied for the vacant position.

Bischoff testified, however, that the present case is the only case in which the Employer or a predecessor has proposed to use outside experience in judging the qualifications of two bidders both of whom are non-probationers and thus are not disqualified by the lack of any seniority.

The Employer argues that Bischoff's testimony about previous instances of non-selection of probationers even though they had experience at another plant does not show a practice that is relevant here. The Employer points out that, in each of those cases, non-selection was based on the probationer's lack of any seniority and not on a concession that in judging qualifications, experience at another plant cannot be considered.

The evidence includes a grievance initiated in behalf of Gary Fossum on October 2, 2011, after the Employer's acquisition of the Minneapolis Plant. It makes an allegation similar to the one made in this case -- that the Employer selected William Pelletier, a non-probationary employee who had less seniority than Fossum and improperly based Pelletier's selection on superior qualifications derived from experience at the St. Paul Plant. Pelletier left the position for health reasons after about two weeks, and the Union withdrew the grievance "without prejudice." This evidence does not show a previous disposition of the present issue that should be interpreted as a concession by either party.

I make the following ruling with respect to the primary issue presented -- whether the Employer, in determining the qualifications of applicants for a vacant position, is prohibited from considering an applicant's experience that was not obtained at the Minneapolis Plant. Section 17.1.4 of the labor agreement provides that the qualifications of applicants "are to be determined by the Company on examination of the employee's record."

The authority given by this provision must, of course, be exercised in good faith, and the criteria the Employer uses in judging qualifications must be related to the tasks to be performed. Certainly, experience in those tasks is a proper consideration in determining qualifications to perform them.

The evidence does not show a past practice indicating agreement by the Employer or its predecessors that experience at other plants should not be used when judging the qualifications of two non-probationary applicants. Nothing in the written agreement states an express limitation that prohibits the Employer from considering any facts relevant to the applicants' qualifications, including the experience of applicants in performing functions of the vacant position -- regardless where that experience was gained. Indeed, in her testimony, the grievant suggested that her long experience as a good driver of automobiles and trucks was a relevant consideration, and I do not disagree with her. Nevertheless, I rule that Jorgenson's judgment was reasonable that Guadarrama was better qualified because he had experience operating a clamp lift truck at the St. Paul Plant, whereas the grievant had no similar experience.

The Union argues that the Employer's interview of the grievant to determine her qualifications was inadequate. The evidence shows that Jorgenson based his decision about qualifications primarily on the factor of previous experience in the primary function of a fork lift operator -- a reasonable criterion for determining qualifications. He knew that Guadarrama had similar experience and that the grievant did not. I rule that, because Jorgenson was aware of Guadarrama's

experience and the grievant's lack of experience, he had sufficient knowledge to make a judgment about that reasonable criterion for determining qualifications.

The Union also argues that the grievant could have been easily trained to operate a fork lift truck, and the Union presented the testimony of several witnesses describing such training. Section 17.2.6, set out above in its entirety, includes a provision related to training for a permanent job vacancy. The last two sentences of that section, which I repeat below, are relevant to training for such a vacancy:

In the event there are two or more applicants and qualifications are equal, plant seniority shall prevail. An employee selected to fill a vacancy shall be given up to twenty (20) working days to qualify for [the] vacant position.

The last sentence of Section 17.2.6 describes a twenty day trial period for the employee who has been selected for a vacancy, using the selection process established by Section 17.1.4, i.e., selection by seniority unless the Employer determines that a junior applicant has superior qualifications. The sentence does not require, however, that either a trial or a training period be given to an employee judged to be less qualified in the Employer's original exercise of the selection process. Accordingly, I rule that the Employer was not obliged to provide the grievant with a trial or with training before its Section 17.1.4 selection of Guadarrama.

The Union presented several witnesses who testified that Guadarrama no longer wants to work in the position at issue. Guadarrama did not testify, but I accept the testimony of these

witnesses as credible. I also accept the Employer's response to this argument, as follows. Guadarrama's current dislike for the job is not relevant to the issue presented by this grievance -- whether his initial selection was done in compliance with the labor agreement. If Guadarrama now bids out of his job as fork lift operator, the position would presumably be posted as a new vacancy to be filled in accord with the bidding process.

Chad A. Theis, Chief Union Steward, testified that in processing another grievance in January of 2014, Oellrich told him that the experience of an employee at another plant would not be considered when determining whether it would post a line-of-progression job or force employees up the progression line. Theis conceded on cross-examination that the Employer has the option under the labor agreement to fill a line-of-progression job by posting a vacancy or by forcing up the line of progression.

I conclude that the Employer did not violate the labor agreement, either as established in writing or by any past practice, when it selected Guadarrama rather than the grievant for the vacant position at issue.

AWARD

The grievance is denied.

August 6, 2014


Thomas P. Gallagher, Arbitrator