

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

BADGER EQUIPMENT COMPANY

and

**INTERNATIONAL UNION, UAW
LOCAL 633**

**FMCS Case No. 05-05626
Grievant: D. Huddleston, Jr.**

Arbitrator: Sharon K. Imes

APPEARANCES:

Thomas Moore, General Manager, Badger Equipment Company appearing on behalf of the Badger Equipment Company, Winona, Minnesota.

Rod Haworth, United Auto Workers, International Representative, appearing on behalf of United Auto Workers, Local 633 and the Grievant.

JURISDICTION:

Badger Equipment Company, referred to herein as the Company or the Employer, and International Union, UAW and its Local No. 633, referred to herein as the Union, are parties to a collective bargaining agreement effective January 21, 2005 to January 20, 2008 which shall remain in full force and effect for the full term of the agreement. Under this agreement, the undersigned was selected to decide a dispute that has occurred between them. Hearing was held on April 13, 2006 in Winona, Minnesota. The parties, both present, were afforded full opportunity to be heard. Briefs were filed with the arbitrator in this matter and were to be received no later than May 11, 2006.

STATEMENT OF THE ISSUE:

Was the Grievant temporarily transferred to a higher paying job and if so, did the Company violate Article VIII, Section 16 of the collective bargaining agreement?

RELEVANT CONTRACT LANGUAGE:

**ARTICLE III
WAGES**

Section 3.0. The subject of wages is covered in a supplement, which is signed by the parties, incorporated herein by reference and made a part of this Agreement. The supplement covers all of the employees included in the above-described unit and shall be effective January 21, 2005.

SENIORITY

Section 8.0. For purposes of this Article, an employee's seniority continues from his/her most recent employment date so long as the employee's seniority has not been charged with or broken by the event covered by the provisions of this Article.

...

Section 8.13. When an employee bids for a job under Section 8.12, and is accepted for that job, his/her rate of pay in the new job will be determined as follows:

Where supervision considers the employee qualified and experienced on the job, he/she will be placed in the new job at the increment level determined by supervision but at a rate not less than the rate received by the employee on the job from which he/she is transferred. Where supervision considers the employee lacking somewhat in qualification or experience for the new job, he/she will be placed in the new job at the increment level determined by supervision but at a rate not less than one increment below the rate he/she held on the job from which he/she was transferred. When supervision considers the employee lacking substantially in qualification or experience for the new job, he/she will be placed in a new job at the increment level determined by supervision but at a rate not less than two increments below the rate he/she held on the job from which he/she was transferred.

...

Section 8.16. Employees maybe (sic) temporarily transferred to other jobs from time to time. When an employee is temporarily required to work on a job carrying a higher rate of pay than his/her current regular job, he/she shall be paid the higher rate. Employees temporarily assigned to work in a higher paid classification for more than one (1) hour will be paid the higher rate for all time worked in the higher classification.

When possible, the Company will attempt to assign on a temporary basis the least senior person in a classification providing, in the judgment of the company, to do so would not interfere with required production.

**ARTICLE XI
GRIEVANCE PROCEDURE**

...

Section 11.1. . . .

At this state, the matter is called a grievance. A grievance is limited to a matter, (sic) which involves the interpretation or application of the provisions of this Agreement.

...

Step 4 - . . . The arbitrator's decision shall be final and binding on the Company, the union, and the employee involved. The arbitrator shall not have authority to add to, subtract from, or change the contract in any respect. Both parties shall have the opportunity to present all relevant evidence on the subject to the arbitrator, and be permitted to cross-examine the other party's witnesses. If the Union is upheld, the

Company will pay the entire cost of the arbitrator. If the Company is upheld, the Union will pay the entire cost of the arbitrator. In the event of a split decision, the parties shall share the arbitrator's charges equally. Any of the time limits mentioned under the above procedure for grievances may be extended by mutual agreement.

...

SUPPLEMENT TO THE AGREEMENT

...

NEW HIRE ADVANCEMENT SCHEDULE

...

When a "New Hire" is permanently transferred through bidding to a higher paying job classification, the employee will continue progression as "New Hire" according to the New Hire Advance Schedule in Section 8.13.

When a "New Hire" is temporarily transferred to a job classification that pays a higher rate, the "New Hire" will be paid the full standard rate as provided in Section 8.16.

....

BACKGROUND AND FACTS:

The Grievant was hired as a shipper with the Company on August 23, 2004 at a rate of \$10.39 per hour. In November that year he bid into the welder class, Labor Grade 9 and transferred to the second shift where he worked until March 2005. From March 22 to April 21, 2005, the Grievant painted on the John Deer Calgary line. On April 21, 2005, the Grievant left for military duty and returned to work on May 2, 2005.¹ Upon returning, he was transferred to other work and between April and August 2005, the Grievant worked as a machine assembler, did touch up work and acted as a shipping clerk.

On July 21, 2005, a grievance was filed asserting that the Company had violated Article VIII of the collective bargaining agreement when it transferred him to various higher paying jobs and did not pay the higher rate. The grievance was denied by the Company and it is this issue that is before the arbitrator.

ARGUMENTS OF THE PARTIES:

¹ The union asserts that the Grievant worked until February 2005 when he was required to take a short leave for military duty. The pay records for the Grievant, however, show the Grievant at work in February and that he took military leave in April, therefore, the record is used as the basis for stating the facts.

The Union asserts that between March 22, 2005 and July 8, 2005 the Grievant was temporarily transferred to higher paying classifications but did not receive higher pay to which he was entitled under the temporary transfer language in the supplemental agreement. It charges that, instead, the Grievant received only those regular raises due him in accordance with the New Hire Advancement Schedule contained in the collective bargaining agreement.

The Union continues that under the language found in Article 8, Section 16 of the collective bargaining agreement and Section C in the supplemental agreement, it is clear that new hires are entitled to be paid the full standard rate of the job to which that employee is temporarily transferred even if the employee has not reached the top of the employee's regular pay grade. Further, it declares that the Company has consistently enforced this language in this manner in the past and has settled past grievances in accord with this practice.

Challenging the Company's position, the Union states that the Company does not dispute its assertion that the Grievant was temporarily transferred from his welding job to do work as a painter and later as an assembler but instead disputes the type of work performed by the Grievant while in this transferred positions and relies upon infrequent management observations as proof that the Grievant was not performing the work required of the positions to which he was transferred. Further, it states that the Company denied the grievance at both the first and second steps of the grievance asserting that the reason the Grievant was not entitled to higher pay in the transferred positions was because he was not at his full labor grade and that it also advanced this argument during the hearing. Continuing, the Union, declaring there is no contract language that supports the Company's position, urges that these arguments be rejected.

Finally, addressing the Company's argument that Grievant was not entitled to higher pay because the positions to which he was transferred were a grade lower than the Grievant's held grade, the Union asserts that the contract language clearly states that employees are entitled to receive the full standard rate of pay for the classification to which they are temporarily transferred if that rate is higher than the rate the employee was receiving at the time of the temporary transfer. Based upon this argument as well as the arguments advanced above, the Union seeks that the Grievant be paid the difference between his new hire progression rate of pay and the full scale rate of pay for the jobs to which he had been temporarily transferred

between March and July 2005 and that he also be paid any difference in wages for any temporary transfer paying a higher rate of pay that can be substantiated prior to January 31, 2006 when the Grievant was awarded the Shipping and Receiving bid and given the full scale rate of pay for that job. The Union also asks that the arbitrator retain jurisdiction for a period of six months from the time the decision is issued.

The Company maintains, however, that the language in Section 8 and the Supplement to the Agreement was included so that an employee's current wage rate would not be reduced if that employee were transferred to a lower job classification and so that an employee who was transferred to a higher job classification would receive the maximum pay rate for that job classification if the employee was qualified for the higher job classification. It also states that it believes the intent of the contract is to ensure that employees do not lose their pay rate when temporarily transferred to a lower labor grade. Based upon these contentions, the Company asserts that it followed the contract and the intentions of the contract when, due to workload, it transferred the Grievant to lower grade classifications but continued to advance him on the pay schedule for the classification into which he had bid. As support for its position it cites testimony from its supervisors that indicated there had been a number of times during the 80's, 90's and 2000's when a new hire employee had been transferred from a higher grade to a lower grade and no additional wages were paid those employees.

DISCUSSION:

In this dispute, the parties have attached conflicting meanings to the contract language pertaining to the temporary transfer of "New Hires" contained in the Supplement to the Agreement. The language in question is as follows: "When a New Hire is temporarily transferred to a job classification that pays a higher rate, the "New Hire" will be paid the full standard rate as provided in Section 8.16." The Union asserts that this language clearly indicates that a "new hire" who is temporarily transferred to a job classification shall be paid at the full standard rate of that classification if the new hire's regular rate on the bid classification schedule is less than the full standard rate. The Company declares that under this language, the parties intend that a new hire would not be paid less than the new hire's regular rate on the bid classification schedule for the period of time the employee has been with the Company if that

employee is temporarily transferred to a job classification with a lower rate of pay. As evidenced by the parties' positions, this provision, although clear in many respects, is susceptible to more than one interpretation.

When interpreting ambiguous provisions arbitrators frequently rely upon a number of principles as guidance. Among them are giving words their normal or technical meaning; applying a dictionary definition; keeping the meaning of the provision consistent with the meaning of the terms throughout the agreement; reviewing precontract negotiations and bargaining history; reviewing the parties' past practice with respect to the intent of the language, and giving effect to all clauses and words. In relying upon these principles and others, the arbitrator seeks to give ambiguous language a construction which is reasonable and equitable to both parties rather than advantageous to only one side.

In this dispute, the evidence submitted as proof of the intent of the language is mostly "he said, she said". The Company's witnesses credibly testified that from personal experience and from actions taken when other employees have been transferred, that employee had to be at an equal or higher grade of pay to get the higher pay rate in the transferred grade. They also testified that when employees were transferred to a classification with a lower pay rate than the employee was being paid, the employee's rate of pay would not be reduced from the rate the employee was receiving prior to the temporary transfer. Juxtaposed to that testimony is the testimony of the Union's witnesses who credibly testified that when employees have been temporarily transferred to a classification with a higher pay rate, the employee received that rate while working in the transferred position and that when this did not happen the Union successfully grieved the issue and the employees were paid the higher rate.

Neither party submitted evidence to support the given testimony nor was any bargaining history submitted.² Consequently, the dictionary meaning of the term "full" and "standard" and the language contained in Section 8.16 of the collective bargaining agreement and in the paragraph preceding the "questioned clause" in Section C of the supplemental agreement were relied upon to determine the parties' intent of the language in Section C of the supplemental agreement which is in dispute. Webster's New World College Dictionary, Fourth Edition,

Copyright 2000 describes “full” as “having reached the greatest development, size, extent, intensity, etc.” , “having attained the highest regular rank”, and “to the greatest degree, completely”, among others, as definitions of the term. It describes “standard” as “conforming to what is usual; regular or typical . . .” as one of its definitions of the term. These definitions, together with the fact that Section 8.16 of the collective bargaining agreement refers to “higher rate” when discussing rate of pay and the fact that Section C in the supplemental agreement differentiates between rate of pay advancement for new hires when the new hire is permanently transferred and when the new hire is temporarily transferred, it is determined that that the parties intended new hires to receive the pay grade associated with the classification to which the employee has been temporarily transferred when that rate of pay is higher than the pay the employee is receiving as the employee advances on the New Hire Advancement Schedule. Given this finding, it is concluded that the Union correctly argues that the Grievant is entitled to additional pay since the standard rates of pay for the positions to which he was temporarily transferred were higher than the pay the Grievant was receiving as a new hire advancing on the New Hire Advancement Schedule.³

Prior to arriving at this conclusion, the Company’s argument that the Grievant did not do the work associated with the positions to which he was transferred and, therefore, was not entitled to the pay grade for the classification was also considered and rejected. There is nothing in the collective bargaining agreement which states that if an employee does not perform the work of the classification to which that employee is assigned the employee will not be paid the rate of pay for that classification. Given this fact, even if the Company correctly states that the Grievant did not do the work normally associated with the classification to which he was temporarily assigned, the rate of pay to which the Grievant is entitled is that rate of pay associated with the temporarily assigned classification.

² The Union did submit Union Exhibit 2, a Company memo issued in 1977, and asserted it was support for the Union position. While this memo addresses issues involved in temporary transfers, it does not address the issue of pay as argued by the parties in this dispute.

³ Further, while the language indicates employees who are temporarily transferred to a classification with a higher rate of pay will be paid the higher rate of pay, there is no language in the agreement which indicates an employee will be paid less than the employee is currently being paid if the employee is transferred to a classification with a lower rate of pay. Consequently, the Company’s argument that the “temporary transfer” language in Section C was intended to accomplish this goal was rejected.

Accordingly, based upon the record, the arguments and the discussion above, the following award is issued.

AWARD

The grievance is granted. The Company is ordered to pay the Grievant the difference between the rate of pay he had achieved on the New Hire Advancement Schedule and the rate of pay for the classifications to which he was transferred during the period between April and August, 2005. The Company is also ordered to pay the Grievant any other differentials that may have resulted from the Grievant being temporarily transferred to another classification with a higher rate of pay than he was earning as a result of his placement on the New Hire Advancement Schedule after August 2005 until the issuance of this award. Further, the arbitrator retains jurisdiction for the sole purpose of determining the amount of money to which the Grievant is entitled should the parties not be able to determine this amount following the issuance of this award.

By: _____
Sharon K. Imes, Arbitrator

July 10, 2006
SKI