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Résumé de l'article

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Lay-Off Seniority Clause and Management Rights

By the majority, where there is no specification on the procedure to be followed in cases of lay-offing employees with equal seniority the employee with the greater number of days of service should have the preference. [1]

The contention of the Union was that the Emloyer had violated the existing collective agreement that is clause 12A, REDUCTION OR FORCES and clause 10, SENIORITY, in lay-offing one employee, badge No. 837,352 of Department 18 tank car. Turcot Plant with a seniority dated October the 2nd 1952 while keeping another employee, badge No. 741,459 of the same department with the same seniority date without giving consideration to the number of days of services rendered by the two employees and also by keeping a third employee, badge No. 746,646 with the seniority date of Septembre the 17th, 1956.

The Union further contends that when there is equal seniority dates, as it is the case for the first two employees, the Employer should have taken into consideration the number of days of service of each employee and should have kept at the Company's service the one with the greater number of days of service with the Company, that is the first employee. Therefore, the Union claims payment for all money which would have been earned by the first employee from November the 5th to December the 5th 1957 also the accumulation of days of service on his record.

The Company contends that clause 18 of the contract does not specify any procedure for laying-off employees with identical seniority. The Company bases itself upon clause 27, A MANAGEMENT RIGHTS, to justify its action. As far as the third employee is concerned, the Company claims that no mention of his name or reference was made before the hearings of the Arbitration Board. The distinguished members of the Board met and the president of the Board and the Representative of the Union agree upon the following award.

A) Considering clause 10, SENIORITY, specifies, that the seniority of the employees at Turcot is departmental;

B) Considering that though there is no specification in clause 18 on the procedure to be followed in cases of lay-offing employees with equal seniority, it is fair and logical that the employee with the greater number of days of service should have the preference in cases of lay-offs where equal seniority date is involved (see appendices B-2, B-3, B-4 procedure outlined in contract for vacation).

C) Considering that the third employee had only a seniority dated Sep-

(1) Grievance between Canadian Car Co. Ltd. and Brotherhood of Railway Carmen of America, Local 930 and 932. Members of the tribunal: Antoine Lamarre, President, Roméo Gérard, Representative for Union and Robert E. Heneault, Company Member, dissenting. Le Service d'Information du Ministère du Travail, Québec le 26 juin 1958, no 1222; 11 juillet 1958, complémentaire.

tember the 17th, 1956, while the claimant's seniority dated October 2nd, 1952, it is apparent that the proper investigation was not made by the Management in respect to the seniority rights of the employees before lay-offing the first employee.

Therefore, the Company is found at fault and must pay to the first employee all the amount he would have earned from November the 5th to December the 5th 1957 had he not been laid-off. Also the first employee should not suffer any loss in the accumulation of working days for that period of time.

MINORITY REPORT

Background

The facts surrounding the dispute are relatively simple, and the parties themselves are in general agreement as to the events, as well as the sequence. As presented to the Board, the facts are substantially as follows:

Two employees were transferred to the Tank Repair Department on October 2, 1952, along with several other employees. In accordance with the provisions of clause 10 of the Agrement, all employees in the Tank Repair Department were equal in seniority. This was agreed to by the parties before the Board. Subsequently, the Company decided to discontinue tank repair work, and therefore, it became necessary to disband the Department. Personnel were gradually laid off from the Department, starting in September 1957. The lay-off was complected on November 8, 1957.

The aggrieved employee was laid-off on November 5, 1957. The last employee to be laid-off, a third employee, who was released on November 8, 1957.

The Issue to be Decided Upon

Was the first employee accorded his rights under the terms of the Collective Agreement between the parties when he was laid-off on November 5, 1957.

Relevant Clauses in the Agreement

Clause 18 — Reduction of Forces:

a) When it becomes necessary to reduce forces within any Department employees with no seniority within said Department will be laid off first. It is becomes necessary to further reduce forces, seniority as provided for in this agreement shall govern, provided the employee can do the work and employees shall be laid-off accordingly. A temporary cessation of work due to lack of material, breakdown of machinery, or an act of God which does not exceed two (2) consecutive working days will not be considered as a reduction of forces. Any other conditions mutually recognized and agreed to between the Company and the Local

Protective Board will also be covered by this provision. It is understood that all employees affected in such instances will be reduced in accordance with their respective seniority.

Clause 10 — Seniority:

a) The Union recognizes the exclusive right of the Company to manage its plants and its other activities and to direct its working forces, to re-organize, close, disband any Department or section thereof, an including the right to hire, suspend or discharge for cause, lay-off, promote, demote and transfer employees, provided the Company shall not use such rights and powers for the purpose of discriminating against any employees or to evade seniority, service or other rights or privileges provided in this Agreement.

The Representative of the Company registers his dissent:

Conclusions

It must be noted that nowhere in the above quoted clauses, is there reference to « service » being used as the criterion in determining the procedure to be followed when it becomes necessary to implement the agreed upon lay-off procedure (Reduction of Forces). Quite to the contrary, clause 18 provides « seniority » as provided for in this agreement shall govern provided the employees can do the work and employees shall be laid-off accordingly.

Considering that the first two employees had equal, and considering also the absence of a specific agreed upon procedure for processing employees with equal seniority during a reduction of forces, there can be no doubt that the parties themselves had not considered this matter for inclusion in the lay-off section of their Agreement. Furthermore, there is no reference to or indication of intent in any relevant section of the Agreement, nor was there evidence of intent by examples of practice.

In the absence of wording, indication of intent or specific practice, we must assume that there is no limitation on management traditional right to manage the enterprise. To the contrary, while there is no limitation in the Agreement, there is specific recognition by the Union in clause 27 of being: « the Company shall not use such rights and powers for the purpose of discriminating against any employees or to evade seniority, service or other rights or privileges provided in this Agreement ».

The Union never alleged that the Company was discriminatory, not that it had attempted to evade seniority or service. The Union simply charged that the wording in the Agreement covered the dispute before the Board. I fail to find one shred of evidence to support this contention.

My colleagues agree that there is no specific reference in the Agreement to a lay-off procedure for employees with equal *seniority*. Yet in the absence of contractual authority, they have seen fit to make the terms « *seniority* » and « *service* » synonymous, because to them « it is fair and logical ».

Whether or not the clauses in the Agreement are « fair and logical » was not the issue before the Board. Our task was simply to consider the facts of the dispute before us, in the Light of the Agreement between the parties and the provisions of the Trades Disputes Act.

While respecting the ability and integrity of my colleagues, I am sincerely disturbed by the reasoning applied in arriving at their conclusions.

Seniority is defined in the Agreement and Service is defined in the Agreement. Rightly or wrongly, the parties themselves have agreed to separate definitions, in two distinct clauses. Furthermore, seniority is defined in terms of classifications and departments (clause 10) thus implying restrictive intentions by the parties rather than expansive interests as concluded by my colleagues.

The grievance must therefore be dismissed.

RECENSIONS - BOOK REVIEWS

UNION IN AMERICA A British View, by B. C. Roberts, 136 pp. Industrial Relations Section, Princeton University, Princeton 1959.

Il est toujours intéressant de connaître les opinions d'un observateur étranger, surtout quand celui-ci possède une certaine compétence. Même s'il est impossible que certains aspects essentiels ne lui échappent, il voit avec des yeux neufs et il n'est pas influencé par les préjugés du milieu. Evidemment cela ne l'empêche pas de transporter les préjugés d'un autre milieu, le sien.

En tous cas l'étude du syndicalisme américain effectuée par le professeur Roberts de l'Université de Londres mérite la considération de tous ceux qui veulent analyser ce phénomène social de ce coté de l'Atlantique.

L'auteur s'est arrêté aux aspects suivants: la structure de l'organisation syndicale, la démocratie syndicale, la corruption, la négociation collective et le contrôle de l'inflation. les relations industrielles, les syndicats et la politique.

Inutile dans cet ouvrage de chercher de longs développements, avec des références aux travaux déjà parus sur le sujet. Ce sont des observations à la suite d'un voyage que l'auteur a fait aux Etats-Unis comme professeur invité à l'Université de Princeton. Aussi y rencontrons-nous beaucoup de choses que tous ceux qui ont une connaissance du syndicalisme aux Etats-Unis savent déjà. Cependant, ce qui rend ses considérations intéressantes, ce sont les comparaisons qu'il est amené naturellement à faire avec le syndicalisme en Grand Bretagne et le système de relations industrielles qui y existe. En outre, ici et là, il se permet d'exposer ses théories concernant l'un ou l'autre aspect du syndicalisme.

Impossible de reprendre ici tout ce qu'il touche. Je crois cependant qu'il vaut la peine de noter comment il explique l'échec de la syndicalisation des collets blancs aux Etats-Unis. «Unions will not secure their allegiance so long as they consider white-collar employees to be simply blue-collar employees with bleached shirts ». Et il va jusqu'à dire: « Although it may appear to be contrary to the concepts of egalitarianism that are cherished in America, there is some reason to believe, from their behavior, that white-collar workers on this side of the Atlantic share the outlook of their European opposite numbers. This means that it may be necessary to develop a new type of organization that is part union, part professional association ».