Relations industrielles
Industrial Relations

Openings and the Expected Permanency of Appointment

Volume 16, numéro 2, avril 1961

URI : https://id.erudit.org/iderudit/1021807ar
DOI : https://doi.org/10.7202/1021807ar

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)
1703-8138 (numérique)

Découvrir la revue

Citer ce document

(1961). Openings and the Expected Permanency of Appointment. *Relations industrielles / Industrial Relations*, *16*(2), 253–255. https://doi.org/10.7202/1021807ar

Résumé de l'article

Openings mean vacancies which are presumed to require more or less permanent appointment wtih the expectation that the job will continue indefinitely.

termined the question of a trial and training period for both clauses. The Award stated:

> « Similarly, the view expressed that the Company is obliged to put the man at work to be able to judge the execution, after the employee has received normal training must be rejected. There is no suggestion of a trial or training period in 803. This section appears to have as its intention the guarantee that qualified men will be retained even if other qualified men, but of less seniority, have to be displaced. It seems to have no intention of placing on the employer the responsibility of accepting as a replacement for a fully qualified man either an under-qualified man or a training program for such a purpose. »

Thus it is clearly established by an arbitral ruling on clause 803 that there is no right to trial and training. While the paragraph above quoted does not mention 813 as well, it will be noted that the report also states, « 803 and 813 must be taken together, as the parties seem to agree. »

The ruling in the Gauthier-Grenier case was intended to cover, and did cover, the right to a trial or training under 803 and 813 taken together. The Award was against any such right.

. . . The arbitrator of the same agreement has no authority to reverse or alter it in a subsequent case unless instructed by the parties jointly to ignore the previous decision.

Aside from this limitation on the arbitrator's authority, and on the merits alone, there appears to be no error of reasoning in the earlier decision. A review of the evidence and arguments in the current Company grievance does not suggest that the clauses 803 and 813 taken together should be given any other construction than that expressed in the Gauthier-Grenier decision.

AWARD ON CLAUSES 803 AND 813 TAKEN TOGETHER

Clauses 803 and 813 taken together do not provide for any right to trial or training. The Company's responsibility will be met if an employee bumping into an unfamiliar job as provided in 803 shall be given the necessary familiarization instruction only. He must be capable of performing the normal requirements of the job when he takes it, but he has a right to receive information necessary to overcome his unfamiliarity with the specific job. This by no means requires a trial or training period.

OPENINGS AND THE EXPECTED PERMANENCY OF APPOINTMENT

> *Openings mean vacancies which are presumed to require more or less permanent appointment with the expectation that the job will continue indefinitely.* [1]

810f) — OPENINGS

(1) *Ibid.*, p. 19-22.

A further dispute concerns the meaning of the word « openings » in 810f). The Company claims that an opening within the intention of the parties at the time of negotiation is restricted to an opening created by retirement, death, discharge, voluntary quit or the restart of equipment following a shut down.

... It will be noted that the sentence in dispute starts with these words: « This paragraph applies in all cases of openings, establishment... » That is, paragraph 810 f) applies to all cases of openings, etc. But paragraph 810 f), as clarified by the above ruling, provides in certain circumstances for a trial period and training, if necessary, of 60 days. It surely cannot be argued that the paragraph applies to openings of such a duration that the Company's obligation to provide a trial and training of 60 days could not be carried out. At least something of larger duration than 60 days must have been intended. If the Union view that all openings mean all openings regardless of duration should prevail, observation of one part of the agreement, assignment of an employee under 810 f) would eliminate the Company's unchallenged right to establish jobs of a duration less than 60 days because of their commitment to a 60 day trial and training period. An employee occupying a short term opening would be denied his right to 60 day training. This is an absurd result. Equally absurd would be to have an employee in a temporary job whose training time would exhaust all or most of the period of the job's existence.

The reasonable view of the intention of this clause 810 f) is that it guarantees that the employee with seniority and with the potentiality and capacity to acquire the skills required to perform another job by transfer shall have the right when the opportunity arises to make such a transfer if he wishes, with certain provisions for trial and training. It surely was never intended to provide transfer rights to an opening that might occur without reference to expected permanency. The disruptive effects of such provision could be intolerable to administration which would be exposed to the whims and capriciousness of the employees who would derive little or no lasting benefit from the exchange. The clause, as it stands interpreted above, gives very important rights to the employees which, if exercised with care, should be very beneficial to the longer service employee. It also gives him much freedom of action such as the right to withdraw from the job to which he aspired. But such advantages are not really enhanced if the rights are applicable to short term openings.

... Short term openings should be excluded. This view is supported by the tone of the language of 810 as a whole, although it is not specifically spelled out. The Article as a whole provides an elaborate and lengthy process to be followed in cases of transfer as shown in the first paragraph. Before transfers take place the Company must post notices advertising the vacancies. The employees have 15 days to apply. If there is urgency the jobs may be filled *temporarily* by seniority and qualification assignment, but the applicants must be considered for the long run assignment, which might set aside the temporary filling of the opening. Once selection is made the employees have the above declared rights to a 60 day trail, and so on.

The language, the tone, the distinction of a temporary arrangement in 810 b) and therefore the implication of a long run assignment, and the whole elaborate

machinery of trial and training strongly suggest that clause 810 was meant to apply only to openings of a more or less permanent nature.

Finally, although implied above, it should be noted that the balance of advantage an disadvantage favours the employer. The employee denied the right to transfer to a *temporary* position loses little if anything. The management required to apply all this time consuming machinery and to accept transfer applications to temporary openings would suffer great inconvenience.

AWARD 810 f) — OPENINGS

Openings mean vacancies which are presumed to require a more or less permanent appointment with the expectation that the job will continue indefinitely.

MENACE À LA SÉCURITÉ ET LÉGALITÉ DE L'ARRÊT DE TRAVAIL

En emmagasinant une trop forte quantité de dynamite sous terre, la Compagnie a créé un danger grave, une menace permanente à la sécurité des employés. L'acte posé étant contraire à la Convention, le Syndicat avait des motifs sérieux d'ordonner l'arrêt de travail, aussi longtemps que la menace persistait. Nous donnons ici quelques extraits de la décision majoritaire. [1]

LA PREUVE

La preuve révèle qu'à compter du 15 août 1960, la Compagnie Campbell Chibougamau Mines Limited a entreposé sous terre une forte quantité de dynamite, soit 1,800 caisses à la Main Mine, Kokko Creek et Cedar Bay. Dès le 16 août 1960, l'Union a enregistré des protestations... Toutes ces démarches se révélant infructueuses, le 18 août au matin, après avoir conféré avec ses membres, l'Union recommande l'arrêt de travail... Le motif: Danger pour la vie des mineurs et partout, modification des conditions de travail.

Si l'on réfère à l'article 121 de la Loi des Mines, « l'emmagasinement des explosifs » dans les dépôts souterrains *ne doit pas dépasser* la quantité requise pour les prochaines 48 heures. On a établi ces quantités requises à 40 caisses pour la Main Mine et 30 caisses pour la Cedar Bay.

Il fut prouvé qu'entre les dates du 16 août et du 21 août, c'est-à-dire après l'emmagasinage sous terre de ces 1,800 caisses de dynamite, les autorités de la mine en ont enlevé une certaine quantité...

La Compagnie n'a pas nié avoir entreposé sous terre une telle quantité d'explosifs. Elle a cependant invoqué des motifs pour le faire:

(1) Différend entre Campbell Chibougamau Mines Limited et United Steelworkers of America, (Local 5186). Camille Beaulieu, J.d., président; Emile Boudreau, arbitre syndical; Antoine Dubuc, arbitre patronal, dissident. Rouyn, le 14 janvier 1961.