

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SAPA EXTRUSION NORTH AMERICA

("the Employer")

AND:

UNITED STEELWORKERS, LOCAL 9042

("the Union")

IN THE MATTER OF:

TRUCK DRIVER'S GRIEVANCE

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARANCES FOR THE EMPLOYER:

B. Richard Baldwin	- Counsel
Jamila Bolahood	- Articling Student
Pamela Leung	- Human Resources Manager
George Mavrommatis	- Production Planning/Shipping Manager

APPEARANCES FOR THE UNION:

Dennis Williamson	- Staff Representative
Cheryl Craig	- Plant Chair
Francis Ouseph	- Grievor

Hearing in this matter was held in Mississauga, Ontario on November 2, 2016

A W A R D

The grievance before me for determination is a claim by Mr. Francis Ouseph for the difference between the plant labour rate and the truck driver's rate for a five-month period in 2013. The grievor, who has been the successful applicant for a posted temporary truck driver's position, remained in his permanent plant labour position for the five-month period in question without being called to drive and thereby earn the higher rate. The assertion is that the grievor was not called to drive because the driving that he would have been assigned was being contracted out. The grievor was then assigned to drive in place of a permanent truck driver on long-term disability and has occupied this full-time driver's position on a temporary basis since. The Employer does not dispute that the driving work that the Union argues should have been assigned to the grievor was contracted out but asserts that it has not breached the collective agreement.

The provisions of the collective agreement relied upon by the Union are set out below:

25.04 When the Company is considering contracting out work which is normally performed by employees in the bargaining unit such that a lay-off occurs, the Company agrees to notify the Union in advance of its intention and if requested will meet with the Union to discuss any alternative suggestions that the Union wishes to present.

Letter of Understanding – Re. Truck Drivers

In the event that the Company eliminates its trucking fleet, it is agreed that the current incumbents in the truck driver categories will be entitled to the following:

- 1) Their wages will be red-circled for the duration of the current collective agreement.
- 2) In the event that the employee exercises his bumping rights in accordance with the collective agreement appropriate training will be provided.
- 3) Should employees working as Truck Drivers opt not to accept a position within the bargaining unit as provided for in (1) and (2) above they shall be eligible to receive severance as per the Employment Standard Act.

The law as it applies to the right of an employer to contract out work of the bargaining unit is well settled. Absent an express restriction in the collective agreement, an employer is entitled to contract out the work of the bargaining unit provided that it does so for genuine business reasons (see re: Brown & Beatty 5:1310 – Clear language required to prohibit "contracting out" and Brown & Beatty 5:1340 – The requirement of "in good faith and for sound business reasons"; Communications, Energy and Paperworkers Union of Canada, Local 333 v. Atlantic Packaging Products Ltd. (2006) 87 CLAS 363; Multi Fittings and International Molders and Allied Workers Union, Region 8 et al. (1989) 70 OR (2^d) 328; IKO Industries Ltd. and USWA (Re) (2002) 118 LAC (4th) 1; J.E. Thomas Specialties Ltd. v. United Steelworkers of America, Local 921L (2003) 72 CLAS 288; International Brotherhood of Bookbinders, Local 28 v.

Council of Printing Industries of Ontario (1989) 20 LAC 365; Robin Hood Multifoods Inc. and UFCW, Local 342-P (Re) (1994) 36 CLAS 483).

The collective agreement provisions relied upon by the Union do not restrict the right of the Employer to contract out. Indeed, both article 25.04 and the Letter of Understanding Re: Truck Drivers confirm the right of the Employer to contract out. Article 25 requires the Employer to consult if the effect of a contracting out is to cause the layoff of a bargaining unit employee. The Letter of Understanding specifies the entitlements that apply to truck drivers "in the event that the Company eliminates its trucking fleet." In particular, there is nothing in the collective agreement that restricts the right to contract out on the basis of the awarding of a temporary assignment as the grievor held in respect of truck driving. To reiterate, there being no restriction upon the right of the Employer to contract out in the collective agreement, the Employer has the right to contract out for genuine business reasons.

The claim in this case is for compensation because for a five-month-period the grievor was not assigned the higher rated truck driving because the truck driving work that he would otherwise have been assigned had been contracted out. There is no dispute that this work had been contracted out for this period. However, absent any restriction in the collective agreement and absent any suggestion that this contracting out had been done for other than genuine business reasons, the Employer had the right to do so. Further, the grievor was not laid off as a result thereof as he continued to work in his permanently assigned plant labourer position throughout. In the result, it cannot be

found that the failure of the Employer to assign this work to the grievor for the five-month period in question breached the collective agreement as may have entitled the grievor to compensation.

Having regard to all of the foregoing, this grievance is hereby dismissed.

Dated this 7th day of November 2016 in the City of Toronto.

Kevin Burkett

KEVIN BURKETT