

BETWEEN:

UNITED STEELWORKERS LOCAL 8341 (the Union)

And

KIK HOLDCO COMPANY (the Employer)

Re grievance of Mohanjit Soor (the Grievor)

Appearing for the Union: Courtney Joseph and others

Appearing for the Employer:

Sole arbitrator: Norm Jesin

Date of hearing: February 9, 2018

AWARD:

The grievance in this case alleges that the grievor was denied a posting for forklift operator in violation of article 19.1 of the collective agreement. That article provides that a posted vacancy is to be awarded to the senior employee with the requisite ability to perform the job. In addition, article 19.7 provides that the Employer may return a successful applicant to the previous position if the employee proves to be unsatisfactory in the posted position during a 30 day trial period.

The grievor has successfully passed a training and licensing program for a forklift license with a company hired by the Employer to evaluate prospective forklift operators. However, the Employer still provides additional safety testing before allowing an employee to drive a forklift on its premises. The grievor was not given any advance knowledge of the contents of the safety test. The Employer asserts that the test demonstrates that the grievor does not have common sense with regard to safety issues and is unable to operate safely. The Union asserts that the test is unfair and that the grievor is being discriminated against. The position that the grievor had applied for is now temporarily being filled by a driver supplied by an agency.

Having regard to the representations of the parties it is my determination that the grievor should be given the test to study so that she is aware of what is expected of her from a safety perspective. The Employer is therefore directed to give the grievor and the Union a written copy of the test that it seeks to administer forthwith. Two weeks later the Employer is directed to administer the test to the grievor again in the presence of an employee designated by the Union

to monitor the evaluation. If the grievor passes the test, the Employer is directed to place the grievor in the forklift position subject to a trial period as contemplated by Article 19.7. If the grievor fails the test she will be denied the position, subject to any argument the Union may make regarding any deficiency in the test, in its administration or in the evaluation of the grievor.

I remain seized.

Dated at Toronto, this 12th day of February, 2018

A handwritten signature in black ink, consisting of stylized initials 'NJ' followed by a long horizontal stroke, positioned above a solid horizontal line.

Norm Jesin