

In the Matter of an Arbitration

Between:

Pan-Osten LTD.

and

UNIFOR

Grievance of Darlene Patrick

AWARD

Before: Dana Randall

For the Employer: Glenn Christie, Counsel
Greg Butler
Heather Pitre

For the Union: Clayton Nunn, National Representative
Mark Clapper
Wayne Johnson
Tony Beaulne

A hearing in this matter was held in Peterborough, Ontario on September 17, 2019.

The Grievance

UNIFOR Local 1987 (the Union) alleges that Darlene Patrick (the Grievor) was improperly laid off by Pan-Osten Ltd. (the Employer). The Grievor was on lay-off for two weeks. The Union seeks two weeks of wages as a remedy.

The Collective Agreement

Article 12.02 (a) is the only relevant article. It provides:

Layoffs will be done in reverse order of seniority and displaced employees may exercise their plant wide seniority to bump more junior employees. Displaced employees will not be allowed to bump up the Grid.

The Facts

The Employer is a small manufacturer located in Peterborough, Ontario. It manufactures check out counters for grocery stores. As I understand the evidence, the final product is made out of many sheet metal pieces. The shop can make thousands of same. Each piece will be sheared, punched, bent, welded, painted, assembled into a final product, and then shipped.

At full capacity, the plant has 35 to 40 employees in the bargaining unit. Customer demand determines capacity and it is very volatile. Lay-offs are frequent. The un rebutted evidence of the Employer is that "lay-offs were often, maybe three times a year". Some lay-offs reduced the bargaining unit to 10 to 12 employees.

On this occasion, prior to lay-off notices handed out on June 21, 2019 there were 27 employees at work in the bargaining unit, including the Grievor. By July 1, 2019 there were 19 and, by that date, the Grievor had been laid off. By the week of July 15-19, 2019, there were more layoffs and the number of employees at work was down to 13.

The Grievor had 26 years of seniority at the time of her layoff. As I understand the evidence, she had more seniority than other employees who were not laid off during the relevant two weeks.

The Grievor's job classification was Machine Line Support (MLS). In Appendix 1 of the collective agreement, it is identified as group 1, the lowest of seven groups or classifications. The employees, with less seniority, who were not laid off, were in higher classifications.

Position of the Parties

The Union argues that the Grievor was laid off out of seniority and that, post lay off, her job, as an MLS, continued to be performed by others.

The Employer acknowledges that the Grievor was more senior than employees who were not laid off, but submits that the latter employees were in a higher classification on the wage grid and that, pursuant to Article 12.02(a), the Grievor could not bump up to their classification in order to avoid layoff.

None of that is controversial. The issue between the parties is not a contractual interpretation one, but rather a factual one. The Union submits that post lay offs, there continued to be a job of work in the MLS position. The Employer denies that, and submits that there was not a full job of work and that exempting the Grievor from lay off was, therefore, an unreasonable result. The Employer led evidence that the Grievor had been laid off in similar circumstances numerous times in the past without Union complaint.

Discussion

The MLS classification is a long standing one. As I understand the evidence, it was introduced twenty or more years ago. There is a job description for the position. Essentially, the position was introduced to increase efficiencies in the shop. Employees, who were tasked with the various functions identified above: shearing, punching, bending, welding and painting the sheet metal pieces were, in the Employer's view, spending too much time getting material from one operator to the next or from one station to the next. The Machine Line Support role was introduced to free up time for the operators to perform their specific tasks.

The evidence is that the MLS tasks are not performed exclusively by the MLS classification. There is an overlap of tasks or duties. Operators, even when running at full capacity, continue to transfer parts from station to station, some of the time.

In my view, as a result, the Union needs to show that, post lay off, there was a job of work in the MLS classification. But the Union has not met that evidentiary burden. Their evidence was no higher than that they witnessed operators advancing material from time to time over the two-week period.

In my view, that is not sufficient to make out their case. Obviously, if the Grievor, a senior employee, was laid off and other, more junior employees in operator classifications were not, the Union would have a compelling case, if there was a job of work in the MLS classification. But those are not the facts before me.

The MLS position supports operators. It is hard to argue with the Employer's case that the job of the MLS is not needed when many of the operators are laid off. At one point, fully half of the bargaining unit was on lay off.

While this quantitative analysis is telling, it is, on its own, not dispositive of the main factual issue, to wit: was there an MLS job there after the layoffs? As noted, that finding is made more problematic by the fact that the job itself overlaps with the tasks of the operators.

No doubt, the Union could lead evidence that, despite these circumstances, a job of work in the MLS position continued to be performed during the layoff. but no such evidence was led.

Disposition

For all of these reasons, this grievance is dismissed.

DATED THIS 10TH DAY OF FEBRUARY, 2020 IN BARRIE, ONTARIO.


Dana Randall, Arbitrator