2007 CarswellNat 1793
Canada Arbitration

Algoma Central Railway v. I.A.M. & A.W.

2007 CarswellNat 1793, 90 C.L.A.S. 37

In the Matter of an Arbitration Algoma Central Railway Inc., (Hereinafter called the "Employer") and The International Association of Machinists and Aerospace Workers, (Hereinafter called the "Union")

E.E. **Palmer** Member

Judgment: May 15, 2007
Docket: None given.

Counsel: D.R. **Veenis**, for Employer
I. **Morland**, for Union

Subject: Labour; Public
Related Abridgment Classifications
Labour and employment law
I Labour law
I.6 Collective agreement
I.6.g Layoff
I.6.g.i What constituting layoff
Headnote
Labour and employment law --- Labour law — Collective agreement — Layoff — What constituting layoff

***E.E. Palmer Member*:**

1 The present arbitration arises out of a Group Grievance filed by the Union on 25 May 2006. The nature of this claim was stated to be [see Exhibit 2]:

> The Company has provided layoff letters to the attached list of employees. As stated in Article 27, there appears to be Technological, operational, organizational and material change and all indications are that they will be permanent. Therefore the Union's position is that Article 27 should apply in its entirety.

2 This matter was not resolved during the Grievance Procedure so it went forward to the present arbitration which was held in Sault Ste. Marie on 29 March 2007. At that time the parties agreed that the undersigned Arbitrator had jurisdiction to determine the resolution of this case. Consequently, the parties were afforded an opportunity to present evidence and argument. My decision follows.

3 First, it is useful to note that this case brings into play three provisions of the Collective Agreement in effect between the parties: Articles 7.08, 27 and 28. It is useful to set out the relevant parts of these sections before proceeding further. These read [see Exhibit 1]:

> **ARTICLE 8**
>
> ***POSTING***

7.08 Notwithstanding anything contained in the Agreement, nothing shall preclude or limit the type of work, which an employee may be required to perform. An employee shall be classified according to the predominant duties he performs.

. . . . .

MATERIAL CHANGE

27.01 Prior to implementing any technological, operational or organizational change of a permanent nature having adverse effects on employees holding permanent assignments, the Company will provide the Union(s) with no less than thirty (30) calendar days' advance notice in writing. The notice should include details of the change and the expected number of employees who could be affected. Note: Designated seasonal positions shall be considered as permanent for the purposes of this article. The expiration of a temporary vacancy or a temporary assignment does not constitute a change under this article. The terms "operational" or "organizational change" do not include normal reassignment of duties arising out of the nature of the work, nor to changes brought about by fluctuations of traffic, seasonal staff adjustments, or changes brought about by general economic conditions. The permanent reduction or elimination of excess plant capacity shall also be considered as technological, operational or organization changes under this clause. Should the Company relocate the home location of a permanent assignment, and the employee holding such assignment would be required to travel an additional 40 miles from their permanent place of residence to that new work location, that will be considered as an operational or organizational change under this provision.

. . . . .

27.03 Should a technological, operational or organizational change result in the permanent layoff of a regularly assigned employee hired by the Company (or its predecessors) before January 1, 1993 and who maintained a continuous employment relationship, the Employer shall canvass the other active employee whose voluntary departure would result in a vacant permanent assignment being made available to avoid the involuntary layoff. The volunteering employee would be given a severance payment equal to two weeks' base wages of the last permanent position held, for each year of cumulative compensated service, up to a maximum severance of one years' base wages or $65,000, which ever is lesser. (Weekly base rate is calculated by multiplying the monthly base rate by 12 and then dividing by 53.1829.)

Note: Cumulative Compensated Services (CCS) means: one month of compensated service for work performed, which will consist of 21 days or major portion thereof, twelve months of CCS shall constitute one year of CCS, calculated from the last date of entry into the Company's service as a new or rehired employee. For partial year credit, six or more months of CCS shall be considered as a year of credit towards computation of severance or layoff benefits. Service of less than six months of CCS shall not be included in the computation.

. . . . .

ARTICLE 28

LAY OFF

28.01 For each year of cumulative compensated service, a permanent employee who is involuntarily laid off, following the signing of this Memorandum of Agreement, will be allowed a gross layoff benefit credit of five weeks for each such year or major portion thereof, up to a maximum of fifty-two weeks. (N.B. see letter attached regarding BMWE employees who are laid off at the time of settlement and their future entitlement to lay-off benefits).

. . . . .

28.03 Notwithstanding any of the above, employees will not be considered laid off for benefit entitlement:

. . . . .

b) During the interval following recall until they actually return to work, or if they decline for any reason recall to any work on the ACR in their own bargaining unit, if they decline to accept any other work on the ACR for which they are qualified or for which they could become qualified in a reasonable period of time.

Note: Although the lay-off benefit ceases, employees' rights and obligations under Article 7.11 remain unchanged.

4 Next, it should be noted that there is no dispute of significance as to the facts underlying this case. Essentially, these were set out in the Employer Brief with which the Union concurred. Therefore, as this is not extensive and also includes the basic argument of the Employer, it is helpful to reproduce the relevant parts of that document [Exhibit 3]:

History of the Dispute:

As a result of a downturn in traffic, an adjustment was made within the ranks of the Mechanic employees represented by the IAM at Sault Ste. Marie. As a result there was insufficient work to retain all of the employees represented by the IAM in their former Mechanic or Composite Mechanic classifications.

Subsequent to the adjustment which was implemented on May 25, 2006, sufficient work was available to support the retention of all of the employees at their normal work location.

Three (3) employees qualified to work in the IAM classification of Composite Mechanic were retained on assignments in that classification responsible to perform work encompassing Mechanical and Electrical tasks.

Additionally, one Lead Hand Mechanic position was retained and one Mechanic was retained through an accommodation of his medical restrictions.

To offset any adverse effects and/or loss of wages by Mechanics unable to hold work in their IAM Mechanic classification and/or not qualified to work in the Composite Mechanic classification, alternate work at the equivalent rate of pay was available at Sault Ste. Marie. That work encompasses repair and maintenance of Car Equipment. Under these circumstances, those employees unable to remain working in the IAM Mechanic classification retain recall rights to future positions or vacancies as Mechanic or Composite Mechanic as they occur.

The Union claims that the changes implemented at Sault Ste. Marie affecting employees represented by the IAM represent Technological, Organizational and/or Operational changes as contemplated by Article 27.

Article 27 states as follows [This and other sections are reproduced above]:

. . . . .

The classification of Composite Equipment Mechanic was established by Memorandum of Settlement in November 2005, during the last round of negotiations, and is applicable to employees maintaining the dual qualifications of Electrician and Machinist.

Those employees possessing the dual qualifications were able to remain employed under IAM representation on the basis of their seniority and qualifications. Similarly, employees possessing the Mechanic qualification were retained under IAM representation on the basis of their seniority. Those employees retained in service through assignment to perform car equipment repair and maintenance have not suffered any loss of wages as a result of the layoff affecting the Mechanic classification. The alternate work was immediately and consistently available at their normal rate of pay from the date that the changes occurred.

It is the Company's position that the changes implemented resulted from a downturn in traffic.

All of the employees have been accommodated through the availability of alternate work with no reduction of wages. There has been no permanent loss of employment and no adverse effect and as a result Article 27 is not applicable.

In addition to the fact that no adverse effect occurred as a result of the change, the terms "operational or organizational" change do not apply to normal reassignment of duties brought about by fluctuations in traffic.

The following summarizes the traffic pattern affecting the ACR territory:

Year MGTM's

2004 715 Million Gross Ton Miles of Traffic (Tons carried × miles travelled)

2005 731 Million Gross Ton Miles of Traffic

2006 667 Million Gross Ton Miles of Traffic (9% reduction year over 2005)

As a reflection of the adjusted traffic, the locomotive fleet assigned to the ACR at Sault Ste. Marie was reduced, with five (5) high horsepower locomotives assigned to freight service, one (1) locomotive assigned to passenger service and one (1) locomotive assigned to yard service.

There is occasional requirement to assign two additional locomotives to the "snow train" or to the "Agawa Canyon Tour Train" during the seasonal service catering to tourist travel. The adjusted staff level of the IAM classifications is adequate to meet the maintenance and repair of this equipment.

The current status of the IAM represented employees in seniority order is as follows:

1) Brian Esson PIN 124643	Off duty Long Term Disability
2) Robert Tindale PIN 124832	In service Composite Mechanic
3) Donald MacKenzie PIN 124677	In service Composite Mechanic
4) Donald Beaudet PIN 124675	In service Modified Duties
5) Terrance Campbell PIN 124846	In service Lead hand Mechanic
6) Michael Cleminson PIN 124772	Off duty Illness/Modified Duties
7) Frank Sauve PIN 124697	In service Mechanic
8) Steve Frayling PIN 124842	In service Mechanic
9) Jamie Marshall PIN 124721	In service Mechanic

The Union additionally progressed a grievance alleging that the Company was in violation of the Collective Agreement when Mechanics assigned to perform the alternate work of repairing and maintaining Car Equipment were occasionally requested to perform tasks in their former Mechanic's classification.

There have been instances where employees have been requested to briefly perform work in their former role of IAM Mechanic. The Company is of the view that this in no way violates the Collective Agreement and that Article 7.08 is applicable. It additionally reflects that the employees have retained their seniority on the IAM Mechanic roster and subject to seniority and qualifications all employees can anticipate a return to work in the classification of Mechanic or Composite Mechanic, as traffic demand requires additional service or through assignment to positions becoming available through attrition.

5 Article 7.08 states as follows [reproduced above]:

. . . . .

The awarding of positions at Sault Ste. Marie was determined on the basis of qualifications and seniority. Employees unable to remain working as IAM Composite Mechanic or IAM Mechanic have not suffered any loss of wages as a result of the layoff in the Mechanic classification.

Alternate work for affected employees, was immediately and consistently available at their normal rate of pay from the date that the changes occurred.

The Union has progressed this case on the basis that a Material Change notice should have been issued at the time that IAM employees were affected by layoff within their classification. The Union has requested as resolution of this matter that severance payments be granted within the ranks of IAM Mechanical employees.

The Company is concerned that employees who have not suffered any unemployment or loss of earnings are seeking compensation through a severance payment even though the voluntary departure of an employee would not result in any material change for employees remaining in service.

Severance payments represent compensation paid in recognition of the Company's inability to provide sufficient employment to retain employees in service. It was never intended to be a reward for voluntarily departing the service of the Company when employment is available. The Company does not agree with the position of the Union for the reasons cited above.

For the foregoing reasons the Company respectfully requests that this grievance be dismissed.

6 Other than the above, the Union added that in 2004 there had been a general lay-off of workers similar to that which occurred here. In that situation, however, it was the case that the terms of Article 27 were applied and the parties affected being given the option of accepting a lay-off while retaining recall rights or opting for a buy-out under its terms and severing their employment completely. The only difference was that in that case various unions under the collective agreement were involved while in the present case only employees represented by the International Association of Machinists were involved. The Union sees this distinction as being meaningless and so the earlier method of dealing with this situation should be followed.

7 Factually, the Union also emphasized three factors of what the Employer did here which support their view. First, the work to which the employees were moved was within the type of work usually done by Canadian Auto Workers employees and this is quite different than their normal work. It involves a different skill set. Second, this change appears permanent and, given the work now required, such is radically changing the nature of their employment. Third, the Union sees this change being one where, in part, the loss of work at Sault Ste. Marie is affected by allocation of maintenance work to Toronto. All these factors, it is argued, support their present claim.

8 Parenthetically, I should note that the Union called two witnesses, S. Cleminson and S. Frayling. Their testimony, however, was merely supportive of above factors and need not be expanded upon.

9 Having considered this matter, it is my decision that this Grievance should be dismissed. The reason for this is rather straightforward. Much of the Union argument revolves around whether a "material change" as defined in Article 27.01 occurred. Assuming they are correct in this regard, however, the claim is this case depends on the meaning of Article 27.03 which provides for the relief sought by the Union.

10 This brings the case to the first sentence of that provision. Specifically, the language that is key to this case reads: "Should a technological, operational or organizational change [i.e., a material change] result in the permanent layoff of a regularly assigned employee...." If this is found, then the choice sought by this Grievance comes into play. Consequently, if the Union shows a "material change" has occurred, it is still necessary to show that this resulted "in the permanent layoff" of the employees involved.

11 Clearly this is not the case here. The employees involved were not laid off, pursuant to Article 7.08, they were moved to other work outside of their normal duties at the same rate of pay they were receiving prior to this change. Thus, the basic requirement of Article 27.03 is not met and this Grievance should be dismissed.

12 I would add that again, if it was correct that the employees involved did receive layoff notices, such clearly was not a notice of permanent layoff and, in any event, they were not laid off at all.

13 Consequently, while one can easily understand that the employees involved would be unhappy with the change, the language of the collective agreement supports the Employer's actions and this Grievance is hereby dismissed.