SHP 486

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

ONTARIO NORTHLAND RAILWAY

(The "Employer")

A N D

NATIONAL, AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW – CANADA)

(The "Union")

GRIEVANCE REGARDING LAY-OFF OF APPRENTICES

SOLE ARBITRATOR: Mr. Frank Reilly

There appeared on behalf of the Company:
Mr. M. J. Restoule

And on behalf of the Union:
Mr. Tom Detillo
Mr. B. Stevens

A hearing in this matter was held at North Bay, Ontario, on the 1st day of September, 1999.

The present arbitration arises out of a grievance filed on behalf of five employees in the Mechanical Department on July 21, 1999 with respect to the lay-off of four machinist apprentices and one carman apprentice. The Joint Statement of Fact and Issue which was signed on behalf of the Union and the Employer reads as follows:

> The Union contends that the Company issued layoff notices to four (4) machinist apprentices and one (1) carman apprentice contrary to Rules 19.14 and 24.10 which speak specifically to layoff of apprentices and ratios. This also encroaches on the natural construction of seniority for the Machinist and Carman groups. The Union is requesting that the apprentice layoff notices be rescinded and that they be made whole forthwith.

The Company maintains that the layoff of the apprentices was not in violation of any of the provisions of the collective agreement and denied the Union's request.

The five employees on behalf of whom the grievance was filed are B. Scobie, who is a carman apprentice, and K. Gore, J. Bannister, G. Pratt, and E. Bruce, who are all machinist apprentices in Ontario Northland's Mechanical Department. All five employees were issued layoff notices on July 15, 1999 as a result of what the Company described as a significant loss in revenue resulting from the labour dispute and work stoppage at Kidd Creek Mines. The layoffs took effect July 29, 1999.

The Parties agreed that I had jurisdiction to hear and determine this matter pursuant to the collective agreement, and a hearing was held in North Bay, Ontario on September 1, 1999, at which hearing the Parties were provided with an opportunity to present evidence and argument in support of their positions.

The relevant facts are not in dispute. In July, 1999, it became necessary for the employer to lay off a number of its employees as a result of a shortage of work. There were a number of journeymen/women as well as apprentices among the group of affected employees. In issuing its lay off notices, the employer decided to lay off all of the apprentices before laying off any journeymen/women. The Union took the position that the employer had acted improperly when it laid off all of the apprentices, and indicated that the language of the collective agreement required the employer to maintain a minimum ratio of one apprentice for every four journeymen (1:4) in a lay-off situation.

The key provisions of the collective agreement referred to by the Parties are as follows:

Rule 19
Seniority

19.1 A new employee shall not be regarded as permanently employed until he/she has completed 65 working days cumulative service. In the meantime, unless removed for cause which in the opinion of the Company, renders him/her undesirable for its service, the employee shall accumulate seniority from the date he/she entered that classification and shall be regarded as coming within the terms of this Agreement. When a new employee is hired, the Company will supply the union with name, employee number and date of hire of the employee.

19.2 Seniority of employees in each of the following trades covered by this Agreement shall, except as otherwise provided herein and in the respective Special Rules, be confined to the seniority terminal at which employed and to the date of entry into their respective classifications:

Boilermakers -
Helpers
Blacksmiths -
Helpers
Carmen (and other tradesmen
represented by Carmen's Organization) -
Helpers
Electrical Workers -
Helpers
Machinists -
Helpers
Pipefitters -
Helpers
Sheet Metal Workers -
Helpers

. . .

19.12 When it becomes necessary to lay off employees for any reason, the force shall be reduced in reverse seniority order as per Rule 19.3 unless otherwise provided in the Special Rules.

19.13 When it becomes necessary to make a reduction in staff at any seniority terminal, at least 2 weeks notice shall be given the employees affected before reduction is made, and lists shall be furnished to the Local Committee and Local Chairperson.

This does not apply in laying off employees who have been temporarily employed for a duration of less than 65 working days to meet special requirements. In the event that a strike or work stoppage by employees in the Railway industry is called a shorter notice may be given under this Rule 19.13. In reducing forces, the ratio of apprentices shall be maintained. [Emphasis added.]

19.14 When layoffs occur, an employee laid off from his/her respective classification at his/her seniority terminal, may within 30 calendar days, displace the junior employee in his/her classification on the basic seniority territory carrying his/her seniority in that classification with him/her, except as may be provided in the respective Special Rules. An employee who declines to displace the junior employee in his/her respective classification in his/her basic seniority territory under this Rule 19.14 shall be laid off subject to recall to his/her home seniority terminal.

19.15 An employee who transfers in accordance with Rule 19.14 shall hold seniority rights at only two seniority terminals on his/her basic seniority territory, that is, at his/her home seniority terminal and at the seniority terminal to which he/she last transferred, except as provided in Rule 19.16.

Rule 24
Apprentices

24.2 The purposes of these standards is to make certain that extreme care is exercised in the selection of applicants and that the methods of training are uniform and sound, with the result that they will be equipped for profitable employment and to further the assurance to the company of proficient employees at the conclusion of the training period.

24.10 The maximum ratio of apprentice to journeymen/women shall not exceed one apprentice to each four (4) journeymen/women in the trade in which he/she is apprenticed, (e.g. one (1) pipefitter apprentice to four (4) pipefitters). If lay offs become necessary apprentices shall be laid off to maintain the same ratio. This ratio may be reduced for trades with less than four (4) journeymen/women.

24.17 Employees selected for apprenticeships from classifications held within this Collective Agreement, will continue to accumulate seniority under their previous classification until they become fully qualified in their respective trade. In the event of staff reductions, apprentices will be entitled to exercise their seniority into the classification from which they had been selected.

> Upon satisfactory completion of the apprenticeship program the apprentice will be given seniority equal to 100% of the time spent as an apprentice.

The employer proceeded first with its argument on the grievance. In its submissions, the employer argued that Rule 24.10 of the agreement should not be interpreted as a guarantee that a certain minimum ratio of apprentices to journeymen/women will be maintained. Rather, the employer argued that the language of 24.10 provides for a maximum number of apprentices in the workplace; there is no minimum number or ratio of apprentices which the employer is required to have. The employer argued that the purpose underlying Rule 24.10 of the collective agreement is to prevent the employer from flooding the workplace with apprentices, who work at a lower rate than journeymen/women. The employer also argued that there is no super seniority for apprentices under the collective agreement and nothing in the collective agreement to prevent the employer from laying off apprentices before laying off any journeymen/women. The employer also argued that apprentices are not production workers, but supplemental staff who, because they are supplemental, are at a primary risk of being laid off.

The Union argued that the purpose of Rule 24.10 of the collective agreement is two-fold. First, in providing for a maximum ratio of one apprentice for every four journeymen/women, the Rule ensures that there will be a sufficient number of journeymen/women available to train the apprentice. Second, the rule provides for a certain minimum level of protection for apprentices in a lay-off situation. The Union submitted that the use of the word "maintain" in Rules 19.13 and 24.10 indicates that the Parties intended to preserve the one to four (1:4) ratio of apprentices to journeymen in a layoff situation. The language of the collective agreement thus prevents the employer from completely eliminating all the apprentice positions. The Union argued that there was nothing in the collective agreement to justify the employer's decision to lay off all of the apprentices. There was no provision in the collective agreement to indicate that apprentices are to be regarded as the most junior members of the journeymen classifications in which they are apprenticed and that they are therefore the first to be laid off where lay-offs are necessary. In fact, the collective agreement provides that apprentices are in a separate classification unto themselves and hold seniority amongst themselves as a group and, at the same time, in the classifications to which they belonged before becoming apprentices.

The Union conceded that the ratio specified in rule 24.10 is not a guarantee of employment for apprentices. However, in a lay-off situation, argued the Union, there is a certain minimum level of protection for apprentices in that rule 24.10 provides that one apprentice is to be maintained for every four journeymen/women.

This case does not represent the first occasion on which language similar to that found in the present collective agreement has had to be interpreted at arbitration. A number of cases which have previously dealt with the lay-off of apprentices were put before me by the Parties for consideration.

In The British Columbia Railway Company and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 (1991) SHP 206 (Williams), an unreported decision, the issue was whether the lay-off of an electrical apprentice violated the collective agreement provision which provided, "In reducing forces, the ratio of apprentices shall be maintained." Elsewhere, the collective agreement stated:

> The number of apprentices in any one craft shall be determined by the number of fully-qualified mechanics on the permanent seniority list in that craft on the system, including main shops. The ratio, unless otherwise mutually agreed, shall not be more than one to every four fully-qualified mechanics on the permanent seniority list.

The Company in that case took the position that the collective agreement required it to ensure that a maximum of one apprentice for every four electricians was employed, but that there was nothing in the agreement to prevent the Company from employing more than four electricians to every apprentice. The arbitrator dismissed the grievance and held that on the wording in the collective agreement, the employer could lay off apprentices such that there were fewer than one apprentice for every four fully qualified mechanics. What the employer could not do was have more than one apprentice for every four fully qualified mechanics.

By contrast, in Re Massey-Ferguson Industries Ltd. and United Automobile Workers, Local 458, (1979) 22 L.A.C. (2d) 104 (Simmons), the arbitrator upheld an employee grievance alleging improper lay-off on the basis that it violated the collective agreement which read in relevant part:

> The ratio of apprentices to journeymen shall not exceed one apprentice to each six (6) journeymen employed. If layoffs become necessary apprentices shall be laid off in the same ratio.

In the Massey-Ferguson case, the issue was whether the employer was entitled to lay off the grievor, an apprentice, while six journeymen were retained in active employment in the wood pattern maker classification. In that case, the apprentices had separate seniority to that of journeymen, and did not compete in seniority with them. The apprentices did have seniority amongst themselves in relation to other apprentices. Citing a number of U.S. awards in support, Arbitrator Simmons held that the employer did not have the right to lay off an apprentice while six journeymen were retained in active employment. The language in the collective agreement was found to be explicit in its requirement that the employer maintain one apprentice for every six journeymen. The arbitrator ordered the grievor compensated for lost earnings from the time of his lay-off up to the point at which a journeyman retired, leaving only five journeymen in active employment.

In Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers Union, Local 598 (1981), 2 L.A.C. (3d) 26, an arbitration board chaired by Arbitrator H.D. Brown heard a grievance filed on behalf of helpers who were laid off due to a production cut-back. Five apprentices with less seniority had been retained by the company. The collective agreement stated that, in cases of lay-off due to a reduction in work force, employees were to be laid off in reverse order of seniority, subject to the Company's right to retain sufficient employees in each job classification to meet the requirements of operations. The collective agreement did not address the issue of lay-off as it applied to apprentices per se. However, the Union argued that apprentices were employees of the company covered by the collective agreement and to whom the general lay-off provision applied. Therefore, the Union argued, the apprentices should have been laid off prior to the helpers, as the former had less seniority. The Union also argued that the grievors were capable of doing the work which was assigned to the apprentices and that the Company's requirement of operations was met by retaining the grievors. The Company argued that the lay-off provision did not apply to apprentices. It took the position that the apprentices were more akin to trainees than productive members of the workforce and that therefore a "reduction in the workforce" did not apply to them. The Company argued that even if the provision did apply, then the retention of the apprentices was necessary to meet the Company's operational requirements.

A majority of the arbitration board in Falconbridge held that the grievor ought to have been dismissed. The Board found as significant the fact that apprentices had to have a Grade 11 or 12 education, pass certain tests and commit to a training programme of 8000 hours or roughly five years in order to become qualified journeymen/women. The Board was of the view that taking all of the factors into account, the apprentices were primarily engaged in training at the time of the lay-offs. They were not, in the majority's view, at pages 36-37:

> retained by the company in competition with the grievor or any other employees but were retained within the apprenticeship programme which had been constituted some years earlier, in order to allow these employees to complete their course and on the other hand to provide the company a source of future diesel mechanics, which was the original intent in starting the programme. The company's foresight in that regard cannot be used against it in acknowledging such a programme while the work-force is stable or increasing but not allowing the programme when there is a decrease in the work-force. The programme for apprentices simply does not form part of the concept of a work-force. And they must be considered extra personnel in the general category of an apprentice. This is not as was suggested, to give apprentices super-seniority over other employees of the company in a lay-off situation because, in our opinion, the apprentices are not subject to the same restrictions on a lay-off and that part of the seniority provisions does not apply to apprentices who are engaged in an apprenticeship programme at the time of lay-off. Their seniority is not a factor in our view in relation to employees in the work-force. They are a separate and distinct group and in that group there was no reduction in the work-force which related at all to the grievors. They are in different job classifications and in different areas of work; a helper is in production as part of his full-time employment, while the apprentice is in the production area as part of his training programme and not as a helper. Even if we considered the application of art. 10.06, we would find that the plain language of the provision contained in that rule is sufficient to allow the company to retain employees in the job

classification to meet its requirement of operations, which in this case would refer to its requirements for the apprentices.

Accordingly, the majority of the board in Falconbridge held that the company did not violate the collective agreement by laying off helpers while the apprentices were retained, and dismissed the grievances.

Decision

The Employer's argument as to the proper interpretation to be accorded to the collective agreement, and in particular Rules 19.13 and 24.10, is not without merit, particularly as it relates to the employer's freedom to hire apprentices. I agree with the Employer that the language in Rule 24.10 does not guarantee that a minimum number of apprentices must be hired by the employer. However, in the event of a lay-off, it is my view that the interpretation of the collective agreement urged by the Union is the correct one. Both Rules 19.13 and 24.10 of the collective agreement require the employer to "maintain" the same ratio of apprentices to journeymen/women referred to in Rule 24.10. Attributing the word "maintained" with its plain and ordinary meaning, I find that the collective agreement requires the employer to preserve or keep the ratio of apprentices to journeymen/women mentioned in rule 24.10 in lay-off situations, which ratio is one apprentice to four journeymen/women (i.e. 1:4). This ratio should have been maintained by the employer in effecting its July 1999 lay-offs.

In so interpreting the collective agreement, I rely on and adopt the reasoning in Massey-Ferguson, supra, which is on all fours with the case before me. The case in The British Columbia Railway case, supra, may be distinguished from the present case on the basis of the different wording in the collective agreement in that case. I find that the language in the collective agreement provisions before Arbitrator Simmons in Massey-Ferguson is closer to that contained in the present collective agreement than that in the British Columbia Railway case.

Although I would have reached the above conclusion on the wording of the collective agreement alone, a purposive interpretation of the collective agreement and one which considers the agreement as a whole would have led me to the same conclusion. Apprentices are a separate and distinct category of person in the work place to whom distinct provisions of the collective agreement apply. Rule 24 sets certain standards with respect to the selection of apprenticeship candidates and with respect to their training. Notably, Rule 24.2 specifies that the purpose of the standards set out in Rule 24 is, inter alia, the assurance to the Company of proficient employees at the conclusion of the training period. Apprentices are not on the same seniority list as journeymen/women in their trade and do not compete with them. Rather, according to the representations of the Parties, apprentices have seniority amongst themselves as a group and also continue to accrue seniority under their previous classification until fully qualified in their trades as per Rule 24.17. Also, the lay-off provision in Rule 19.12 of the collective agreement states that the force is to be reduced in reverse order of seniority as per Rule 19.3. Notably, apprentices are not among the classifications listed in Rule 19.3. This would seem to support the conclusion that apprentices constitute a separate and distinct group for the purposes of lay-off.

It is clear from the collective agreement that a chief, if not the chief, reason for the apprentices' presence in the workplace is their training. The are not, as was pointed out by the Parties in their submission, part of the employer's production workers in the same way other employees in the bargaining unit are. Through the apprenticeship programme, the employer and the apprentice make a considerable commitment to the on-the-job and classroom training of the apprentice with a view to providing the company, upon completion of the programme by the apprentice, with proficient journeymen/women and providing the apprentices with gainful employment in their chosen trade.

In my view, interpreting Article 24.10 of the collective agreement so as to require the employer to maintain one apprentice for every four journeymen/women in lay-off situations is consistent with the purposes set out in Article 24.2 and other provisions of the collective agreement applicable to apprentices. It provides some measure of security to apprentices who have committed to the apprenticeship programme but not yet completed it. Of course, it may be necessary to reduce the number of apprentices in order to ensure that the ratio of apprentices to journeymen does not exceed one to four, in keeping with the language of the first part of Rule 24.10 of the agreement.

Thus, reading the collective agreement as a whole, I agree with the Union that apprentices are not to be regarded as the most junior members of the journeymen/women classifications in which they are apprenticed, and therefore the

first to be laid off when a given trade is affected by a shortage of work. Accordingly, the employer was not entitled to eliminate all of the apprenticeship positions and to lay off all of the apprentices before laying off any journeymen/women.

Accordingly, I find that the employer has violated the collective agreement in laying off the carman apprentice and the four machinist apprentices without maintaining the one to four ratio for apprentices to journeymen/women in the two given trades. therefore direct the employer to reinstate, with full compensation and seniority, those of the apprentices necessary to ensure the maintenance of the one to four ratio for apprentices to journeymen. I shall remain seized with respect to any difficulty the Parties may have in implementing this award. Finally, I would like to thank presenters for both the Company and the Union for the thoughtful, thorough and able submissions made by both sides in helping me to decide this matter.

Dated at Kitchener this _13th_ day of October, 1999.

(signed) FRANK REILLY