

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SAULT COLLEGE (Hereinafter referred to as
the College)

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(Hereinafter referred to as the Union)

AND IN THE MATTER OF THE GRIEVANCE OF A. ACETI.

BOARD OF ARBITRATION: Gail Brent
A. Shields, College Nominee
Eva Marszewski, Union Nominee

APPEARANCES:
FOR THE COLLEGE: W. J. Hayter, Counsel
Charles Shand
R. K. McClelland
Peter Lloyd

FOR THE UNION: S. T. Coudge, Counsel
A. Aceti, Grievor

HEARING HELD IN TORONTO ON OCTOBER 26, 1981.

DECISION

The matter before the board arises out of a grievance (Exhibit 1) filed on April 23, 1981 alleging that the grievor was improperly laid off.

Counsel for the College submitted that the Union had not complied with article 8.08(b) of the collective agreement, and that the election there set out is a precondition to the jurisdiction of this board to hear and determine the matter. The Union did not agree with the position that the election was a precondition to the jurisdiction of the board. With the agreement of the parties, the board was not required to determine the question, and the parties proceeded to deal with the merits of the case without prejudice to any future position that they

might take concerning any condition precedent to jurisdiction in article 8.08(b).

The board was informed that the rights of a third party could be affected by the decision in this case. That third party, Mr. J. Bowes, was notified of the hearing and his right to participate; he did not attend.

The grievor's seniority date is April 1, 1976. He was actively employed at the College from that date until July, 1981, when his lay off was effective. The grievor has had a Class A Motor Vehicle licence since 1968. Prior to joining the College, he worked as a mechanic, for the most part in his own businesses. His testimony indicated that his practical experience as a mechanic was gained by working primarily on automobiles, although he did do some work on heavy equipment. The types of heavy equipment on which he worked were five ton trucks and skidders from logging operations. Since being employed as a Teaching Master at the College he has been teaching in the Automotive Department. In 1976 he also taught in the Heavy Equipment Department for about one month, when a Teaching Master in that Department had to undergo surgery. At that time he taught primarily in the electrical and engine brake areas of the Heavy Equipment course. There was no criticism of his performance then or later.

The grievor does not possess a Certificate of Qualification as a Heavy Duty Equipment Mechanic, and he does not possess a Heavy Equipment endorsement on his Class A Licence. Mr. Bowes, the Teaching Master he seeks to displace, teaches in the Heavy Duty Equipment Department, and possesses a Certificate

of Qualification as a Heavy Duty Equipment Mechanic. The seniority date for Mr. Bowes is September 25, 1978. Mr. Bowes has always taught in the Heavy Duty Equipment Department. Prior to his appointment at the College he had seven years of experience working on heavy duty equipment, primarily in the mining industry.

The evidence indicates that Teaching Masters in the two areas in question are required to teach both the theory and practical areas of the curricula set out by the Ministry of Colleges and Universities for the appropriate apprenticeship programmes. It appears that approximately sixty percent of the time is spent in the classroom dealing with theory, and the balance is spent in the shops where student work is supervised.

The grievor compared the curricula for the two programmes (Exhibits 3 and 4) and concluded that roughly seventy per cent of the two was identical. The remaining thirty per cent of the Heavy Duty Equipment curriculum consists of material which is not dealt with in the automobile mechanic programme.

The Heavy Duty Equipment Mechanic Training Profile (Exhibit 3) lists six units to be taught to students in the programme. Those units are: Applied Work Practices and Procedures, Engines, Fuel Systems, Electrical Systems, Hydraulic and Pneumatic Systems, and Power Trains and Control Systems. Examining the grievor's analysis of the curriculum, it appears that the areas of greatest difference between Heavy Duty Equipment and automobiles are in Fuel Systems, Hydraulic and Pneumatic Systems, and Power Trains and Control Systems. In those three areas there

was a significant portion of material which the grievor identified as not being taught in the automotive programme, and about which he testified that he could not teach now and do a good job of it. He also agreed that the unit entitled Hydraulic and Pneumatic Systems was a very important part of the Heavy Duty Equipment programme, and that the areas Fuel Systems and Hydraulic and Pneumatic Systems are "critical" areas.

The grievor also agreed that his experience in the automotive area helped make him able to teach his students in the Automotive Department. He agreed that because he has met the problems himself he is better able to point them out to his students when they are trying to diagnose the troubles encountered in the shop. The grievor agreed that someone with seven years of experience working on heavy equipment would likely have encountered most problems and be able to use that knowledge in the course of teaching in the shop. He agreed that Mr. Bowes has a "clear advantage" over him in the practical side, and in the teaching of Hydraulic and Pneumatic Systems and Fuel Systems generally. It was the grievor's contention that he understood all of the areas, but was not presently competent to teach them without preparation.

Mr. Shand, the Chairman of Technical Trades at the College, testified that there was a significant difference between a Class A licence, a Class A licence with a diesel endorsement (or a heavy equipment endorsement as it was referred to earlier), and a Certificate of Qualification as a Heavy Duty Equipment Mechanic. He said that the Class A licence with the endorsement only allows the person to work on diesel engines. He also said that a person

with a Class A licence would need two years of work experience in the trade to get a Certificate of Qualification. All of the Teaching Masters in the Heavy Equipment Department have Certificates of Qualification.

Mr. Shand said that he considered the grievor's complaint concerning the lay off, and denied his claim because there was no indication that the grievor had ever worked on heavy equipment. He said that the grievor never gave any indication that he had experience working on anything other than automobiles. In the course of assessing the grievor's qualifications, Mr. Shand referred to the grievor's previous work record before joining the College. Mr. Shand said that he considered Mr. Bowes to be better qualified to teach the course in question than the grievor, and that the grievor's lack of experience on heavy equipment was his main concern.

Mr. Lloyd is not employed at the College. He is Technical Training Manager for Crother Equipment, and is involved in the design and supervision of the provincial apprenticeship programmes in the Heavy Duty Equipment area. It was his opinion that the area of hydraulics was the "major" area when one looked for apprentices in the province. He was also of the opinion that fuel systems was an important area, and that someone with a Class A licence and no experience in the servicing of Heavy Duty Equipment was not qualified to teach in the department. Mr. Lloyd had never seen the grievor teach, and had no first hand knowledge of the grievor's ability to teach in the department.

The relevant portion of the collective agreement is reproduced below:

8.05 When the College decides to lay off one or more employees who have completed the probationary period, the following placement and displacement provisions shall apply to full-time employees. It is understood that in the application hereof the College retains the right to determine the employees who will most effectively and efficiently carry out the objectives, operations, programmes and purpose of the College consistent with the following:

.....

- (b) failing placement under paragraph (a) above, such employee shall be reassigned to displace another full-time employee in the same classification provided that:
 - (i) the displacing employee has the competence, skill, experience and suitability to fulfill the requirements of the position relatively equal to the employee being displaced;
 - (ii) the employee being displaced has lesser seniority with the College.

In order to succeed the grievor must show that he has the "competence, skill, experience and suitability to fulfill the requirements of the position" of Teaching Master in the Heavy Duty Equipment course taught by Mr. Bowes which are "relatively equal" to those of Mr. Bowes. Putting the grievor's case at its strongest, we can assume that he is now competent to teach roughly seventy per cent of the course which Mr. Bowes teaches, and that he believes that he can prepare himself to teach the remaining thirty per cent. We have no reason to assume other than that Mr. Bowes is presently competent to teach one hundred per cent of the course he teaches.

It may be that the grievor is right when he asserts that he would be able to prepare the lessons for those parts of the

course with which he is not familiar; however, when one compares his experience with that of Mr. Bowes, it is clear that Mr. Bowes has had much more practical experience diagnosing what is wrong with heavy equipment and repairing that equipment than the grievor has had. It seems apparent from the evidence that such experience would make any instructor in the area much more skilled in the supervision of students in the shops than one without a similar sort of experience. When one examines the evidence, it appears that the differences between heavy equipment and automobiles are such that it is not self-evident that a Class A mechanic could be expected to know how to diagnose and repair problems in the fuel and hydraulics systems of the machines in question.

It seems, therefore, that the differences between the grievor and Mr. Bowes are more significant than the differences between two relatively equal Teaching Masters with different degrees of familiarity within their areas because of the length of time they have spent teaching in them. This appears to be a case of two Teaching Masters, each of whom is skilled and competent within his own area; but whose areas, while overlapping to a considerable degree, are dissimilar enough to require different skills, experience, and competence to be able to teach the full range of subjects in each programme. It is therefore not possible, on the evidence presented to this board, to conclude that the grievor was relatively equal in "competence, skill, experience and suitability" to fulfill the requirements of the job performed by Mr. Bowes. That is, it is not possible to

conclude, on the evidence, that the grievor could step into the job now being performed by Mr. Bowes and perform it adequately.

For all of the reasons set out above the grievance must fail.

DATED AT LONDON, ONTARIO THIS 21st DAY OF December, 1981.

Gail Brent

Gail Brent.

I concur/~~dissent~~

"A Shields"

A. Shields, College Nominee

I concur/dissent

Separate opinion to follow

Eva Marszewski, Union Nominee