

IN THE MATTER OF AN ARBITRATION

BETWEEN:

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

- and -

GEORGE BROWN COLLEGE
(hereinafter referred to as "the College")

Grievance of Susan McAuley
96D933 CAAT (A)

Before: M. G. Mitchnick - Chairman
 S. Murray - Union Nominee
 R. Gallivan - College Nominee

Appearances:

For the Union:

A. Ryder
T. Tomassi

For the College:

C. Zabek
A. Lillipold
D. Ellis

And:

S. Kavanaugh
B. Floody

Hearings held in Toronto on April 23rd, 1997 and January 19th,
21st, 29th & 30th, May 5th and June 11th, 1998

A W A R D

The present case involves another in the series of faculty lay-offs which the College was forced to implement effective the fall of 1996. The grievor Susan McAuley has taught in the College's Hospitality Centre, initially in Continuing Education, since 1989, and seeks to displace Mr. Brian Floody, who joined the Centre from a business career in September 1994. Alternatively, the grievor seeks to displace Ms. Suzanne Kavanaugh, who also joined the College from a career in business, but a year later than Mr. Floody (September 1995). Ms. Kavanaugh is a professor in the Human Resources Management program of the College's School of Business, a program designed to provide training for individuals looking to a career as a Human Resources specialist. The governing article, Article 27.06 (and specifically ¶(ii)) provides:

27.06 When the College decides to lay off or to reduce the number of full-time employees who have completed the probationary period to transfer involuntarily full-time employees who have completed the probationary period to another position from that previously held as a result of such lay-off or reduction of employees, the following placement and displacement provisions shall apply to full-time employees so affected. Where an employee has the competence, skill and experience to fulfill the requirements of the full-time position concerned, seniority shall apply consistent with the following:

- (i) An employee will be reassigned within the College to a vacant full-time position in lieu of being laid off if the employee has the competence, skill and experience to perform the requirements of a vacant position.
- (ii) Failing placement under 27.06(i), such employee shall be reassigned to displace another full-time

employee in the same classification provided that:

- (a) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned;
- (b) the employee being displaced has lesser seniority with the College.

The grievor graduated from high school in 1959 and went directly to Ontario Hydro, where she worked in a statistical position for 6 years. She was then out of the work force for some 20 years while raising a family. In 1986 she enrolled full-time in the Honours Diploma course in Hotel Management at the George Brown Hospitality Centre, and graduated first in the course (second in the Division overall). For that accomplishment she won the Hotel Association Award for Scholastic Achievement. The courses so covered by the grievor in that Hospitality program included a variety of Accounting courses, Food and Beverage Control, Labour Cost, Purchasing, Law & Insurance, Security, Kitchen Management, and Mixology. In the summer interval between her first and second years she had worked at the Sheraton Hotel in Toronto, and upon graduation she moved into a newly-established position of Manager of Human Resources at the Guild Inn (a position which, owing to a sale of the Inn, lasted only four months). She was, however, approached that same year by the then Chair of the Continuing Education program to teach the Human Resources Night School course, and commenced that with the spring session of 1989. The grievor's teaching involvement expanded from there, causing her to become full-time sessional and ultimately a regular member of the faculty at the Centre. The

courses taught by the grievor over that period are set out in an exhibit which the grievor has prepared, and which notes as well the time she estimates she put into preparing the courses in each instance:

<u>Date</u>	<u>Course</u>	<u>Length</u>	<u>Preparation</u>
1989	<u>Con-Ed Spring</u>	30 hours	Prepared weekly
1989	<u>Con-Ed Fall</u>	30 hours	Prepared weekly
1990	<u>Con-Ed Spring</u>	30 hours	Prepared weekly
1990	<u>Semester 1</u> Human Resources Supervision	60 hours 30 hours	2-3 months for both
1991	<u>Con-Ed Winter</u>	30 hours	Previously prepared
1991	T.A.C.E.T. Course	72 hours	Prepared weekly
1991	<u>Both Semesters</u> Group Dynamics Human Resources	2 hours 60 hours	1 week Previously prepared
1992	<u>Semester 1</u> Training techniques	30 hours	4 months
1992	<u>Semester 2</u> Supervisory techniques	30 hours	4 months
1993	T.A.C.E.T. Course	72 hours	Prepared weekly
1993	<u>Semester 1</u> Human Resources Supervision Training Techniques	60 hours 30 hours 30 hours	All previously prepared, but new material for Training Techniques 1 month
1994	T.A.C.E.T. Course	72 hours	Prepared weekly
1994	<u>Semester 1</u> General Education Human Resources Supervision	24 hours 60 hours 30 hours	4 months Previously prepared Previously prepared
1994	<u>Semester 2</u> Human Resources	60 hours	Previously prepared

	Supervision	30 hours	Previously prepared
1995	T.A.C.E.T. Course	102 hours	Prepared weekly
1995	<u>Semester 1</u>		
	Human Resources	60 hours	5-6 months on
	Supervision	30 hours	both courses
1996	<u>Semester 2</u>		
	Human Resources	60 hours	Previously prepared
	Supervision	30 hours	Previously prepared

T.A.C.E.T. was a program whereby the government financed the delivery of courses to persons in the working community based on identified needs, and the grievor prepared and taught a Human Resources course there in conjunction with someone from industry.

The "2-3 months" preparation time in 1990 came about when the grievor was asked at the end of June of 1990 to present a new course in Supervision the following September. Using a new text, the grievor developed course outlines over the summer that she could use to deliver her regular courses plus the new course as of September. In June of 1992 the grievor once again was told that the College wanted to present a new course in Training Techniques geared specifically to a group of third year health-care students in the Food and Nutrition Manager course, and, through a series of visits arranged with Hospitals and Nursing Homes over the summer, once again developed a course for delivery in the fall. In 1994 the grievor toward the end of May was assigned responsibility for portions of a new General Education course that all Colleges were required to teach, and again her summer went into preparing it. In 1995 it was the feeling of the Division that a new text and broadened subject matter were needed

at the Centre, and the grievor took on that task of re-designing the Human Resources and the Supervision courses commencing in the spring of that year and once again running on through the summer.

The grievor was also active in college-wide activities beyond her specific teaching duties at the Centre, serving on both the qualitative program review and the College Council committees (being, in the case of the latter, Chair-elect at the time of her lay-off). The grievor has spent some time waiting tables and tending bar as part of her education, but obviously acknowledges the limited time she has spent in industry outside of her College career. She has, however, received the current outline for all of the courses taught by Mr. Floody, for example, and has found no discernible distinction between the George Brown courses now and the courses as she took them. The grievor has never suggested that she could step in and take over all of Mr. Floody's courses with no lead-up whatsoever, but testified that she feels fully comfortable with her ability to teach them competently with the minimum time allowed any professor on the SWF for preparation in the delivery of a course. We would add for completeness, and without deciding relevance or comparability (of which there is very limited evidence), that the grievor since leaving George Brown College was hired on short notice at Centennial College to teach four sessional courses in Hospitality commencing the fall term of 1997. That was extended to seven courses in the winter term.

The College put into evidence a 1994 Performance Appraisal

for the grievor, which set out the following:

1. SPECIALTY SUBJECT - KNOWLEDGE, SKILLS, APPLICATION

The depth of research done on subject material is very commendable. This knowledge is applied in extensive lesson plans which are well organized. To allow Susan to be as flexible and as comfortable as she should be in applying knowledge in the classroom setting, she needs to be exposed to the type of work experience that her students will encounter.

2. TEACHING STYLE - STATEMENT OF CHARACTERISTICS

Susan deliberately changes style throughout class time to keep the interest of the students up. She is fair but firm, encourages questions and employs examples appropriate to each program and even uses individual experiences within a class. I would like to see an increase in the case studies and simulations presently used in Human Resources.

3. PERSONAL ATTRIBUTES - LEVEL OF ACCEPTANCE BY STAFF AND STUDENTS

Susan is very organized, hard working and caring. Because of this she is well-liked by the students. Her hard work and leadership in the recent Quality Scan has earned her the respect of her colleagues. She is very professional in her manner.

4. SUMMARY OF STATEMENT OR OBSERVATIONS AND RECOMMENDATIONS

Susan is very particular about what and how she presents information to students. This is both a strength and a weakness. The students are well aware of her work and respect her thoroughness, however when class discussion moves away from the direct topic the lack of wide work experience detracts somewhat from Susan's presentation. I recommend the development of one new course and a plan of professional development time in industry. I would also like to see overheads cleaned off and some handouts retyped. They are hard to read.

5. RECOMMENDATION FOR NEW CONTRACT

Recommendation for a full-time contract.

As can be seen, while the grievor's lack of industry experience is noted as an obvious drawback for her, it did not prevent an overall positive evaluation, and a further "recommendation for a full-time contract" (nor is the grievor's evidence disputed that the other performance evaluations that the grievor received in her period at the College were all in a positive vein). On the point of gaining time in industry, the grievor on her own noted in the "Comment" box of her evaluation form:

I look forward to spending some professional development time in the industry. This was most helpful when I spent time in nursing homes and hospitals before teaching the Food Service Supervisors.

The grievor testified that she was in fact keen for the opportunity to expand her practical exposure, and Dorothy Ellis (who in fact did the evaluation) undertook to arrange it. The grievor testified that that was, however, never followed through on.

Ms. Ellis herself did testify in the matter, and is currently the Administrative Chair of the Hospitality Centre. It is not clear what background in industry she may have had, but she first joined the Centre as a part-time teacher, teaching Nutrition. Subsequently she was asked to teach the Sanitation course, now taught by Mr. Floody. The reason Ms. Ellis was called as a witness is that the Union tendered into evidence a document that was prepared by her, and that on its face shows the grievor as the "back-up" teacher for a number of courses, including Hospitality Law 2016, for the budget period May to August 1996 (prior to the decision to lay the grievor off from

employment). It was the evidence of Ms. Ellis that, notwithstanding the document, she would have had the grievor in mind for only some of the courses shown, and that those would not have included the Law course, for which the grievor lacked the expertise. Maureen Callahan, currently the Vice-President Academic and Student Affairs, gave evidence as well, relating to the overall College process for lay-offs and potential "bumping".

In the latter regard, Ms. Callahan noted that the senior faculty-member must have the qualifications to teach the courses that the junior faculty-member is currently teaching, immediately. With respect to a faculty member being asked to teach a course that the individual had never taught before, Ms. Callahan explained that if the area involved is, for example, English Literature, a professor might be asked to teach a specific Drama course for the first time, but they'd "know the course content".

The bulk of the College's evidence concerning its assessment of the qualifications of the grievor to displace Ms. Kavanaugh in the Human Resources Management Program of the School of Business was given by Anne Lillipold, the College's Manager of Labour Relations for Academic at the relevant time. Ms Lillipold herself has a substantial Human Resources background in the Hospitality industry, and in fact taught some of the courses for the Human Resource Management Program in its inaugural year of 1992. Ms. Lillipold went through the courses delivered by Ms. Kavanaugh in some detail, but her basic point was that there is a

substantial difference between the breadth and depth of courses offered to individuals in the School of Business seeking to graduate from that cross-industry program into a career in Human Resources Management as a specialist, and those presented simply as an adjunct to individuals being trained in the operations field as managers and front-line supervisors in the hospitality industry.

The College's view of the qualifications of the grievor to teach the case-load of Brian Floody was presented to the board by Mr. Dan Borowec, who has since left the College to work closer to his residence, but who was with George Brown as the Academic Chair of the Hospitality Centre from May of 1994 to January of this year. Mr. Borowec has an Honours B. Comm. in Hotel and Food Administration, has served as both a consultant and an owner in the Hospitality industry, and spent nine years in the Food and Beverage Management Program at Durham College, including time as a co-ordinator. Mr. Borowec was Chair when Mr. Floody joined the College, and made reference to the posting that Mr. Floody was brought in under. That posting set out the following:

QUALIFICATIONS:

- Graduate degree in either Hospitality Management, Education or Psychology/Sociology program.
- Eight years managerial experience working in high-class hotels and/or restaurants.
- Teaching experience on a variety of Hospitality courses would be a definite asset.
- Must have excellent communication and interpersonal skills.

DUTIES:

- Teaches Mixology, Bar Accounting, Accounting, Human Resources, Dining Room Organization and Service, plus General Education courses.
- Assists in program reviews and revises and updates course curriculum.
- Assists with the interviewing of prospective students.
- Assists in student placement.
- Performs other related duties as required.

The relevance of a degree in Psychology/Sociology was not explained, although that does happen to be the undergraduate degree that Mr. Floody possesses. It was Mr. Borowec's evidence that the qualifications listed in the posting would have excluded the grievor from consideration, in particular on the requirement for eight years' experience at high-class establishments in the industry. Mr. Borowec added that all of the courses listed as well are very specific to persons with that background, singling out Mixology in particular as a classic example of where one had to have the actual experience to "walk that talk", and that it wasn't enough to be able to teach recipes from a book. Mr. Borowec mentioned as well the value of ongoing Trade Association involvement in the matter of assisting students ultimately to get placed, and of a sound academic background which exposes one to a variety of teaching styles, as well as the acquisition of further knowledge. On virtually all of Mr. Floody's courses, Mr. Borowec testified that the grievor lacked the hands-on experience to be able to relate those to real-life experiences, particularly bearing in mind that at least some of the students in those courses would come from industry, and would bring their questions

to the classroom. The thrust of Mr. Borowec's evidence was simply that the grievor could not teach those courses. Mr. Borowec acknowledged in cross-examination that the courses under discussion are essentially theoretical in nature, and that, from that perspective, it might be said that any course can be taught by anyone. Mr. Borowec went on to add, however, that that was true only "if one does not wish to attach high quality to the teaching; but if one prides oneself as the premier Hospitality course in the country ...". With all of these "theory" courses, Mr. Borowec noted further that the supplementation of them by actual experience is a good way to enhance the learning experience. Mr. Borowec also gave evidence with respect to a student from industry in one of the grievor's courses having come to him to express his (and, the student said, two or three others') disagreement with some of the things that the grievor was saying. In terms of the significance of this one instance, we would only note that it was never raised with the grievor, and that her evidence is not disputed that (subject to the one comment referred to earlier about enhancing the grievor's practical experience) her performance evaluations were always favourable.

As noted, Mr. Borowec singled out Mixology as a prime example of a course, although theoretical in concept, that actually requires hands-on experience to meet the minimum qualifications to deliver it. As it happens, the grievor in the past had actually been asked by Dorothy Ellis, the Administrative

Chair, if she would agree to teach the Mixology course for one semester (the grievor declined, because of the lack of adequate preparation time). Advised of that in cross-examination, Mr. Borowec indicated that that was not something that he was privy to, and that he could only say that he himself would "seek the individual with the most experience", but that "sometimes you have to work with what you inherit". In further cross-examination Mr. Borowec made it clear that he did not in fact consider the grievor to be qualified to teach the courses that she had actually been teaching and, indeed, that he himself never would have hired her.

The Union called one witness in Reply to the case put in by the College (and particularly the evidence of Mr. Borowec) and that was Mr. Russell Cooper. Initially in the financial industry for several years, Mr. Cooper in the early 1980's was Executive Director of a number of Hotel trade associations, and as Executive Director of the LLBO was chairman of the committee that re-wrote the province's liquor laws. Before that Mr. Cooper held a number of Senior Executive Assistant positions in the provincial government. A lecturer and consultant in the industry, Mr. Cooper in 1986 joined George Brown's Hospitality Centre as a faculty member. Mr. Cooper subsequently served as Chair of the Curriculum Committee for the Hospitality Centre, and as a faculty member. For the period roughly 1993 to 1994 he preceded Mr. Borowec as the Centre's Academic Chair. Mr. Cooper

was asked by the Union to comment on the "qualifications" as set out in the job ad that brought Mr. Floody into the College in 1994. Mr. Cooper himself does not have a graduate degree, and thought that was an unusual qualification for a teaching position in Hospitality. He also doubted whether a large number of the current faculty members at the Centre had had eight years' experience in industry. Mr. Cooper did acknowledge in cross, however, that a lot of the staff are experienced chefs. In his 12 years at the Centre Mr. Cooper has himself taught Supervision, Human Resources, Hospitality Law and Security, Bar Accounting, Sanitation, Psychology, and General Education, and testified that he would not consider the eight-year experience component necessary for any of those. Mr. Cooper was asked as well to comment on whether he thought the grievor was qualified to teach the Sanitation course. Mr. Cooper responded that he taught the Sanitation course three times without ever having taken it (nor does Mr. Cooper appear to have ever owned or managed an establishment). Mr. Cooper did not actually answer the question of the qualifications of the grievor directly, noting that the problem with the question was that the Dean had always felt that if the College hired exceptional teachers who were good in the class and at preparing their material, they could teach any course. Mr. Cooper noted as well that there had been discussion at a faculty meeting recently over the fact that so many of the teachers had let their trade associations lapse, since the

College pulled out of providing dues subsidies three years ago. With respect to Ms. Ellis's denial of any intention, at least on her part, ever to call upon the grievor if needed to assume the task of teaching the Law course, Mr. Cooper testified that one of the conditions of the grievor's hiring was that she be able to teach the Law courses as required, and with a view to that happening he had actually had the grievor audit the full course taught by (practising lawyer) Mr. Abbass.

Both of the incumbents, Ms. Kavanaugh and Mr. Floody, gave extensive evidence in the proceedings. Mr. Floody, it might be noted, when he first arrived at the Hospitality Centre, taught some of the same courses the grievor had been teaching, and was provided with her materials. Mr. Floody also audited some of the courses being presented to assist him in his preparation for teaching them. Apart from that, however, there is no doubt that both Mr. Floody and Ms. Kavanaugh bring extensive credentials and work experience to the programs they are currently employed in. Mr. Floody, in particular, in terms of the qualifications being looked for by Mr. Borowec, although not the holder of a "graduate" degree, has vast experience in owning and managing food and beverage establishments, and consulting with respect to same. But that, to put the matter squarely, is irrelevant here.

The applicable clause which the College, and ultimately this board, is called upon to apply, once again, is the following:

27.06 When the College decides to lay off or to reduce the number of full-time employees who have

completed the probationary period to transfer involuntarily full-time employees who have completed the probationary period to another position from that previously held as a result of such lay-off or reduction of employees, the following placement and displacement provisions shall apply to full-time employees so affected. Where an employee has the competence, skill and experience to fulfill the requirements of the full-time position concerned, seniority shall apply consistent with the following:

. . .

- (ii) Failing placement under 27.06(i), such employee shall be reassigned to displace another full-time employee in the same classification provided that:
 - (a) the displacing employee has the competence, skill and experience to fulfill the requirements of the position concerned;
 - (b) the employee being displaced has lesser seniority with the College.

That is not a "competition" clause. It used to be a competition clause. But that changed in the 1980's. As arbitrator Swan accordingly notes in his Seneca College (Morgulis) case, issued August 19th, 1994, and upheld on judicial review (brought by the Union on other grounds) on March 4th, 1996:

It will be observed that, unlike earlier versions of this collective agreement between the parties, the agreement applicable to this case provides a so-called "threshold clause", which does not set up a competition between an employee attempting to displace and those who are to be displaced, but simply requires that the employee possess the competence, skill and experience to fulfil the requirements of the position concerned. Thus, it is not necessary for the grievor to demonstrate that he is better qualified than the incumbents, but only that he is objectively qualified to fulfil the requirements of the position. Similarly, it is irrelevant if the incumbents are better qualified than the grievor, provided that the grievor meets the criteria set out in the collective agreement.

(pages 14-15)

Similarly, commenting on this change, see, for example Niagara College (Martin), award of H.D. Brown issued October 30th, 1989, at page 8. That said, the cases have also made it clear (notwithstanding the comment attributed to the Dean here) that having the "potential", in terms of aptitude, to ultimately prepare oneself to teach any course, is not sufficient to meet the test of present ability. See, in particular, Fanshawe College (Hyland), decision of Mr. Picher dated September 29, 1997, at page 12. And as Mr. Brown put it once again in Niagara College, supra, and as oft-repeated in the case law:

The grievor must establish that he met the conditions of the Article of the agreement under which he claims entitlement at that time so that it must be found if his grievance is to succeed that he was fully capable of stepping into the shoes of the incumbent as it were in order to fulfill that position and therefore to displace the incumbent on the basis of his greater seniority.

(page 9)

Or as arbitrator Devlin put it, at page 11 in Niagara College (Mymryk) (decision issued November 20th, 1989):

Although the Union also suggested that we ought to consider the fact that there is the preparation time provided to Teaching Masters under the Collective Agreement, we do not view this as a period in which it is intended that the employee may become qualified for the position concerned. In other words, the fact that preparation time is provided does not alleviate the necessity to demonstrate that the employee can meet the requirements of the position.

(emphasis added)

Nonetheless, as Mr. Swan noted in the Seneca College case, *supra*, the "realities" of the teaching system (as demonstrated consistently through the grievor's teaching career) must fairly form part of the consideration as well:

As we read the collective agreement, it requires that the displacing Professor be qualified immediately to perform the requirements of the position, and that individual may not claim, for example, time for retraining or re-qualifying prior to taking up the duties. But the words of the collective agreement must be understood in the context of teaching in a College, where there is normally a summer break to prepare for classes beginning again in September, and where similar breaks occur between terms at other occasions in the year. There is also a provision for preparation time, and the collective agreement must be understood in light of the availability of such preparation periods to allow the Professor to brush up on courses which he or she has not taught for a while.

(page 15)

The critical distinction, we would note in Mr. Swan's comments, appears to us to be between time needed to "brush up" on a course, and the more extensive time it might take to qualify at all. Mr. Swan of course was commenting on the facts directly before him, and as other cases have noted (and Mrs. Ellis acknowledges), actually having "taught" the course before is obviously not the only way to demonstrate the minimum qualifications. See, for example, the comments of arbitrator Devlin again in Niagara College (Mymryck), *supra*, this time at pages 10 and 11:

Although the Grievor has not taught Linear Circuits in the past, in our view, an employee is not confined to demonstrating his skill, competence and experience by establishing that he previously taught the particular course in issue. Instead, an employee may demonstrate that he has sufficient knowledge of the subject matter to be able to fulfill the requirements of the position.

With respect to the position occupied in the Business School by Ms. Kavanaugh, we find the evidence of Ms. Lillipold, who not only appears to fully appreciate the test in this situation, but who also was one of the founding teachers in the program, to be compelling. And that is that the "Human Resources" courses being offered to the future specialists in the HR program are simply not comparable to the courses provided as an adjunct to participants in the Hospitality program. That is something that the grievor, with her limited HR background and lack of any teaching experience with the former courses, would in fairness have difficulty assessing. But even in her own evidence the grievor was able to identify and acknowledge the specific areas of compensation and benefits (including Pension benefits) where she has no background level of experience at all. That is a key area within the realm of Human Resources management as a specialty, and (given the grievor's academic record) while presumably within her general capability to master some day, clearly falls outside the category of mere "brushing up", in the words of arbitrator Swan. We would note also that the College's position that there is a substantial difference separating the Hospitality courses from the HR Management courses is consistent with the position taken by the College in the past that the former courses are not transferable for credit from the former program to the latter.

Similar situations, it appears to us, have been recognized by boards of arbitration in this College context previously. In

St. Clair College (Barei), being a follow-up decision dated October 17th, 1989, arbitrator Carter commented:

On the evidence presented at the hearing we have no reason to doubt that the grievor was other than a competent and skilful teacher who if given sufficient time could have fulfilled the requirements of the position. Nevertheless, we are not convinced that at the time of her lay-off the grievor had the required experience to fulfill the requirements of the position at the time it was being claimed.

For one thing, we are faced with the fact that during her teaching career, either at the College or elsewhere, the grievor had never taught a course at the level and depth of the courses taught by the incumbent.

The complete lack of experience in teaching the type of course required by the position means that there is little hard evidence to support the grievor's contention that she could meet the requirements of the position. Moreover, the lack of professional credentials, while not by itself fatal, also creates doubt as to whether the grievor had the type of experience required for the teaching of the accounting courses offered to the business students.

(page 6)

Similarly in Georgian College (Simpson), a recent award of Mr. Brown dated March 30, 1998, the arbitrator noted at page 18:

There is the subjective evidence of Mr. Mainfrize that the Grievor should be able to teach the BTSD Math courses because he has previously taught some similar courses but there is not evidence that he has been seen or in fact has taught the course outlines in the academic area but rather his experience has been limited to the career job opportunity, trades group which requires a lower level of completion than College preparatory courses in which the Grievor had not been previously involved.

Similarly, see Niagara College (Mymryk), *supra*, where arbitrator Devlin commented:

Based on the evidence, therefore, we are compelled to conclude that there are significant differences in the depth and the nature of the material taught at the technologist level when compared with the material taught at the technician level. The Grievor did not

complete his own training at the technologist level and we are not persuaded that the courses he has taught at the technician level have provided him with the requisite knowledge or with a sufficient theoretical background to teach Linear Circuits 1; nor are we persuaded that his experience in industry has had this effect. Linear Circuits 1 is not an introductory level course but is a five-credit course taught in the fall term of the second year of the computer, electrical and electronics engineering technology programs.

(page 13)

The depth and breadth of the courses, particularly within the context of a very differently-targeted academic program, therefore, clearly is a factor, and we find the claim to bump the more junior of the two targeted faculty members, Ms. Kavanaugh, to be unsustainable.

The case as it affects the grievor's ability to deliver courses within her own Division, however, is more problematic for the College. Under the case law that coalesces as a question of the courses being taught at that time by Mr. Floody, and it is this aspect of the present case which casts in the sharpest possible relief the difference between the prior form of "competition" clause in Article 27.06, and the current "threshold" clause. And it is perhaps necessary to take some care when using phrases that had their origin in the period of the earlier collective agreement. One can still speak in terms of the grievor being able to "step into the shoes" of Mr. Floody, as the cases do for example, so long as one is careful in so doing not to misdirect the inquiry. Mr. Floody obviously was a major "catch" for the College, bringing to the Hospitality Centre a wealth of hands-on managerial experience, at least on the bar

and restaurant side. It would not matter how many months of academic prep-time the grievor was given; she never would, in the colloquial sense, be able to "fill those shoes", of Mr. Floody. But again, it is not necessary for her to show that she could. It is simply the position, identified by Mr. Floody's case-load, that is in question, and under the current language the only test that the grievor has to meet, as arbitrator Burkett, for example, sets out in his recent award in June of this year at Fanshawe College (Dobos) (citing Mr. Brown in Niagara College, *supra*), is that:

... the grievor ... have the requisite competence, skill and experience to fill the position as at the time of lay-off. The "position" at that time is that which the incumbent fills with his responsibilities for teaching assignments at that time.

(page 6)

While, certainly, the system owes it to the students that the minimum level of teaching expected is still "quality" teaching, we would note that under a seniority clause like the present there are limitations as to how high the College can choose to set the bar. And in that regard it is particularly the evidence of Mr. Borowec that causes the board concern. Mr. Borowec made it clear that he would not even have hired the grievor to teach in the Hospitality Centre. Given that view, it is not surprising that the grievor failed to make the cut, when, with Mr. Borowec then in charge of academic matters, the time arose to lay-off staff from the Centre. But, with respect, it seems to us that under this re-formulated Article, affording greater weight to seniority rights in these situations than it had previously, that

was not the moment to be raising the bar. It is not unusual for schools to hire new teachers with little or no practical experience, but rather based entirely on their excellence demonstrated as a student (law schools, for example), and (in answer to the possible comment that this was not a law school), that is exactly what the Hospitality Centre did in the case of the grievor. The grievor's lack of related work experience was her obvious deficiency, but nonetheless the College sought out her employment, and continued that employment, on the basis of her academic experience with the subject matter, and the knowledge and skill she had otherwise demonstrated. And her evaluations in fact were positive ones. No matter how skilled or experienced a teacher might be, there can always be a student in the class, particularly with some experience of his or her own, who will disagree with the instructor's approach or opinion on a matter. The College appeared to place no weight on this isolated event at the time, and, on the evidence, it does not show up as any continuing form of concern in the grievor's overall performance on the job.

Mr. Floody cannot now be used to establish the threshold. That would have the effect of rendering the Article a "competition" clause once again. But that is the flavour of Mr. Borowec's evidence throughout. An employer's desire to have the best possible teacher is readily understandable. But that is not the balance that has been struck under the present collective agreement. At the point of a lay-off, the only question for

determination, on an objective basis is: does the senior employee exhibit sufficient qualifications so as to be reasonably anticipated to be able to teach the courses. Mr. Borowec in every instance (including the courses the instant grievor was teaching) says unequivocally "no". Yet in two of his prime examples, Mixology and Law, when the College needed someone to teach those courses, the College apparently saw it differently. While, we appreciate, it does not represent the ideal from the College's perspective, what the combined evidence in this case appears to demonstrate is that the level of the bulk of these courses is such that the Centre is able to use its staff relatively interchangeably to teach the program's courses when needed. We doubt that the College would do that (even on short notice, as in the case of Mixology, rather than, for example, engaging a part-time or sessional instructor) if it did not feel that the staff in question had the competence, skill and experience to deliver the courses at least at the level of minimum acceptability. Nor do the grievor's own estimates of the time put into course-preparation in the past, in our view, reflect negatively on her ability as an individual to step in and teach a new course. Rather (particularly in light of the grievor's previous academic record), they appear to us to reflect no more than the grievor's own conscientiousness, and the standards that she typically sets for herself.

While, as Mr. Borowec noted, there may always be some students who come to take the George Brown courses from positions

in industry, the bulk of the courses in Mr. Floody's case load are at the "introductory" level, and the grievor has taken (and excelled at) them all. Against the standards appropriate under Article 27.06, it appears to us that the grievor has a demonstrated "knowledge of the course content", to use the words of Ms. Callahan cited earlier, that, combined with her teaching experience and competence, meets the test. The one course that the grievor acknowledges difficulty matching up with the curriculum as she took it is the course now called "Bar Management". That appears to be a course somewhat unique to Mr. Floody, organized and developed by him and another. But if the College, starting from the premise that the grievor were to be retained as part of the faculty, felt a need to maintain that course on the curriculum, and to select the grievor as the one to teach it, it remains a "theory" course, and not so far outside the grievor's teaching area that she could not be expected to deliver it from the materials (as Mr. Floody did when he first came to the Centre and took on some of the courses that the grievor had developed). And again, in making that statement, it has to be kept clearly in mind that the expectation is not that the grievor be able to teach that course with the same reservoir of experience to draw on as Mr. Floody himself.

The parties also, it should be added, identified "Sanitation" as a further course forming part of Mr. Floody's work assignment, if the second term of the 1996-97 school year is to be looked at as well. While our preliminary view of the

matter would incline toward that expressed by arbitrator Burkett in Fanshawe College (Dobos), *supra*, at page 8, we do not have to decide that point, since it would be our conclusion that the addition of the Sanitation course would not alter the result in any event. The course is a rather straightforward one, and Mr. Cooper testified that he was able to teach the course with no difficulty, without having even taken it before. Mr. Cooper appears to have had no more "hands-on" experience in managing a bar or restaurant than the grievor had. While neither, obviously, could bring to the course the kind of personal experience in dealing with inspectors that Mr. Floody could, once again, that is not the test.

And finally on that subject, we note the emphasis by the College here on the "Qualifications" as they were drafted in the job advertisement that Mr. Floody responded to in coming to the College in 1994. Those once again provided:

QUALIFICATIONS:

- Graduate degree in either Hospitality Management, Education or Psychology/Sociology program.
- Eight years managerial experience working in high-class hotels and/or restaurants.
- Teaching experience on a variety of Hospitality courses would be a definite asset.
- Must have excellent communication and interpersonal skills.

Again, from the point of view of how high one chooses to "set the bar", the employer obviously has wider latitude in pursuing its "ideal" candidate in a hiring situation than (at least under this clause) it does in a lay-off. If it were otherwise, we note, an

employer could use its unfettered hiring discretion to set a standard for new employees that, on an ensuing lay-off, only those new and most junior of employees could be expected to meet.

The attempt to extend that same standard to a lay-off, in other words, once again would indirectly transform the lay-off clause into a comparability one, and would reduce the seniority protection of the existing employees effectively to zero. But just to address the points in the cited advertisement: Mr. Floody himself does not have a "graduate" degree as called for and, in fact having no academic training in this area, audited a number of courses before teaching them. This case also has the unusual feature of the board having heard the perception of the matter not only from the immediate Academic Chair, but also from his predecessor, Mr. Cooper, and Mr. Cooper's comments, noted above, on both the degree and the eight years of work experience as a necessary "prerequisite", are set out above. On the "asset" of prior teaching experience in the area, the grievor has that; and membership in the Trade Associations appears to be open to anyone with the need and/or desire to pursue it.

In sum, we find the College's assessment of the qualifications of the grievor to step in and teach the courses of Ms. Kavanaugh in the Business School, as expressed and explained by Ms. Lillipold, to be a sustainable one. With regard to the position identified in the grievor's home area, however, we find that the available evidence, viewed objectively, would have caused one to conclude that the grievor had the competence, skill

and experience to teach the courses of that position as needed, and we so declare.

It was agreed that, as in Fanshawe College (Dobos), supra, the matter would be referred back to the parties to deal with remedy in the event either of the claims of the grievor were upheld at this stage. The board so orders, but will obviously remain seized of the matter until the claim of the grievor has been resolved to the satisfaction of the parties, or by this board.

Dated at Toronto this 24th day of July, 1998

I concur

M. G. Mitchnick

"S. Murray"

S. Murray

I dissent (see attached)

"R. Gallivan"

R. Gallivan