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# Binding Authority of a Previous Award, Trial Period Denied

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Résumé de l'article

The arbitrator of the same agreement has no authority to reverse or alter it in a subsequent case. An employee, in order to fulfil the normal requirements of his job, has no right to a training period.

> « Suppose we have to put on leave of absence five men in the furnace room; we look at seniority; if there are others in our division with less seniority we would let out these junior men and give their jobs to any of the five men who are senior. We get in touch with the Personnel Department who tell us which are the least senior men in the Division. Suppose the surplus is in the furnace room, the five will be moved out but the five junior men in the Division will go. »

This testimony shows a practice at variance with the Company's interpretation. Mr. Murphy obviously looks upon the closing down of five furnace jobs as a reduction in the working force; he recognizes the right of senior men to take jobs of less senior men in the Division, and makes *no* reference to the total work force; the Personnel Department becomes involved only to the extent that it supplies information on seniority . . .

AWARD

*A reduction of the working force is to be interpreted as meaning a reduction in any part of the work force, and is not to be limited to a reduction of the total number of employees. The clause gives protection to both their employment and their level of employment. When an employee is confronted with the closing out of the job he has held, a reduction of the work force is taking place.*

## BINDING AUTHORITY OF A PREVIOUS AWARD TRIAL PERIOD DENIED

> *The arbitrator of the same agreement has no authority to reverse or alter it in a subsequent case. An employee, in order to fulfil the normal requirements of his job, has no right to a training period.* [1]

CLAUSES 813 AND 803

These clauses are taken up together because the 813 clause is relevant to the interpretation of the final part of clause 803.

The Company asks the arbitrator if under 813 there is an implication of a trial period if necessary, or an implication of a trial period alone.

Clause 813 reads as follows:

> « The normal requirements of a job are in direct relation with the work to be done and with its execution in a reasonably acceptable way; any employee who observes the conditions fulfils the normal requirements of his job. »

. . . Under clause 905 arbitration is extended to cover, among other things, cases involving « interpretation » of provisions of the agreement, The Gauthier-Grenier case involved interpretation of clause 813 and 803. In that instance the union claimed the right to training for an employee exercising his rights under 803. But since it was agreed that 803 and 813 must be considered together, the Award de-

(1) *Ibid.*, pp. 9-11.

termined the question of a trial and training period for both clauses. The Award stated:

> « Similarly, the view expressed that the Company is obliged to put the man at work to be able to judge the execution, after the employee has received normal training must be rejected. There is no suggestion of a trial or training period in 803. This section appears to have as its intention the guarantee that qualified men will be retained even if other qualified men, but of less seniority, have to be displaced. It seems to have no intention of placing on the employer the responsibility of accepting as a replacement for a fully qualified man either an under-qualified man or a training program for such a purpose. »

Thus it is clearly established by an arbitral ruling on clause 803 that there is no right to trial and training. While the paragraph above quoted does not mention 813 as well, it will be noted that the report also states, « 803 and 813 must be taken together, as the parties seem to agree. »

The ruling in the Gauthier-Grenier case was intended to cover, and did cover, the right to a trial or training under 803 and 813 taken together. The Award was against any such right.

. . . The arbitrator of the same agreement has no authority to reverse or alter it in a subsequent case unless instructed by the parties jointly to ignore the previous decision.

Aside from this limitation on the arbitrator's authority, and on the merits alone, there appears to be no error of reasoning in the earlier decision. A review of the evidence and arguments in the current Company grievance does not suggest that the clauses 803 and 813 taken together should be given any other construction than that expressed in the Gauthier-Grenier decision.

AWARD ON CLAUSES 803 AND 813 TAKEN TOGETHER

*Clauses 803 and 813 taken together do not provide for any right to trial or training. The Company's responsibility will be met if an employee bumping into an unfamiliar job as provided in 803 shall be given the necessary familiarization instruction only. He must be capable of performing the normal requirements of the job when he takes it, but he has a right to receive information necessary to overcome his unfamiliarity with the specific job. This by no means requires a trial or training period.*

## OPENINGS AND THE EXPECTED PERMANENCY OF APPOINTMENT

> *Openings mean vacancies which are presumed to require more or less permanent appointment with the expectation that the job will continue indefinitely.* [1]

810f) — OPENINGS

(1) *Ibid.*, p. 19-22.