4-3-1968

Re Int'l Union of Electrical Workers, Local 510, and Phillips Cables Ltd

Innis Christie

D M. Storey

J J. Cowan

RE INT'L UNION OF ELECTRICAL WORKERS, LOCAL 510, AND PHILLIPS CABLES LTD.

I. Christie, D.M. Storey, J.J. Cowan. *April 3, 1968.*

EMPLOYEE GRIEVANCE alleging improper lay-off.

I.G. Scott and others for the union.
W.G. Gray, Q.C., and others for the company.

AWARD

The facts:

A statement of the facts upon which this grievance arose has been agreed to by the parties.

At approximately 3:30 p.m. on October 5, 1967, a power interruption cut off the supply of water to a portion of the company's Brockville plant and the company was informed that this situation was not likely to be corrected before morning. The company therefore, at 6 p.m. on October 5, 1967, sent home four tuber operators whose machines were affected by reduced air pressure. These operators were the grievors John Link, W. Skelton, James Donaghue and Karl Frohle. At 8 p.m. on the same day, because the work on the sparkers and winders came from the machines of the four employees mentioned, five other employees, three sparker operators, one winder operator and one clerk were sent home.

The company's number 12 and number 9 tubers are not involved with air pressure and these machines continued normal running. The company's number 11 tuber needs air on its capstan but it was felt that this machine could safely operate on a lower pressure and it was kept running. The trouble was corrected by the start of the midnight shift. The grievors were all on the 4 p.m. to 12 midnight shift.

The grievance reads as follows:

> "We protest that unfair action of management in sending us home before the end of our shift on October 5, 1967. It is our understanding that no effort was made to find alternate work for us. We therefore request that we be compensated for all lost time due to this unfair action.
>
> (signed)
>
> 'John Link' 'R.G. Townsend'
> 'W. Skelton' 'H. Worden'
> 'James Donaghue' 'D.A. Hunter'
> 'Karl Frohle' 'E. Fitzpatrick'"

The company replied to the grievance on October 17, 1967, as follows:

> "A water failure and a resultant loss of air pressure made it impossible to operate certain tubers with a subsequent reduction in work for sparkers, winders, etc. You were sent home because other departments were similarly effected; therefore, no other work was available."

It was agreed by the parties at the hearing that the company had made no effort to find alternate work for the employees who were sent home. It was also agreed that persons other than the grievors had been sent home on the day in question.

The issue:

On these facts art. 17.01 of the collective agreement is relevant. It provides:

> "17.01 Reporting for Work
>
> "Any employee who reports for work at his regular starting time and has not been instructed in advance by the Company not to do so shall be guaranteed at straight time, as a minimum payment, four (4) consecutive hours of work. This shall not apply in the event of a labour dispute, as defined in Section 12 hereof, fire, electrical failure, floods, failure of water supply, major mechanical failure or other major catastrophe, or in case of an employee returning for work after an absence, or when the employee fails to keep the Company informed of his current address and telephone number, or when the employee is not willing to accept alternate work."

The issue is whether the union is correct in its submission that the lay-off provisions of the collective agreement are also relevant. Article 5.07 provides:

> "5.07 A lay-off in, or from, a department (or such skilled occupational groups within a department as are agreed upon from time to time by the Company together with the Union) shall be in accordance with departmental or occupational group seniority."

Article 5.12, relating to temporary lay-offs, provides:

> "5.12 Temporary lay-offs resulting from unexpected manufacturing problems, material shortages, equipment or power failure, or other circumstances, may be made without regard to seniority, provided, however, that every effort will be made to provide work for employees in their own or other departments or skilled occupational groups."

The issue before this board resolves itself into a question of whether a lay-off within arts. 5.07 and 5.12 includes a period without work of less than one shift. If such a period does fall within those sections then, the company having failed to make any effort to provide work for the grievors, art. 5.12 is by its own terms inapplicable and the usual seniority requirements of

art. 5.07 apply. It is not disputed that if they do apply each of the grievors is entitled to compensation.

Decision:

Counsel for the company argued that the fact that there is a "reporting in" provision of the collective agreement means that the "lay-off" provisions must be interpreted as being inapplicable to lay-offs of less than one full shift. In making this submission counsel relied heavily on *Re Int'l U.E.W., Local 526, and Automatic Electric (Canada) Ltd. (Brockville Plant)* (unreported, J.C. Anderson, C.C.J., chairman). The collective agreement before the board in that matter was in all material respects the same as the one before this board. The majority award reads in part;

> "Ordinarily a lay-off takes place when a company notifies its employees that they will not be required for work for a definite period of time, even if that time is only one-half a shift, and the board would have no hesitation in finding that the grievors were laid off in the sense contemplated by art. 5.12 were it not for the provision of art. 17.01. Thus a lay-off not expected to exceed five working days includes, if standing by itself, a compulsory deprivation of work for less than one day, but the art. 17.01 guarantees a minimum employment of four hours if an employee reports for work in the usual manner, which these grievors did. This article could have no meaning unless it applied to a compulsory deprivation of work for less than one day. A board of arbitration is obliged to attribute some meaning to every provision of a collective agreement. Your board is of the opinion that *Article* 17.01 does apply in this situation because it is otherwise difficult to conceive of a situation where it would apply if it does not apply to this situation. For these reasons the board is obliged to dismiss this grievance. [Article numbers have been changed to conform to the collective agreement before this board.]"

Counsel for the company also cited *Re United Glass & Ceramic Workers, Local 203, and Dominion Glass Co. Ltd.* (1965), 16 L.A.C. 171 [note] (H.C. Arrell, chairman), in which the majority concluded that, in the collective agreement before them, "lay-off" seniority provisions did not apply to periods of less than one shift. The full report of that case was introduced.

The counsel for the union advanced two alternate arguments. In the first place he argued that even if the *Automatic Electric*

award is correct and art. 5.12 cannot apply where art. 17.01 is applicable the grievance must be sustained. This is so, he submitted because art. 17.01, the "reporting in" provision, is only applicable where there is no work at all for the employees when they report in. Such was not the case here, counsel pointed out. This argument may be shortly dismissed. On its clear words art. 17.01 is applicable whether or not work has been commenced. Counsel cited *Re U.A.W., Local 195, and Bendix-Eclipse of Canada Ltd.* (1959), 10 L.A.C. 159 (H.D. Lang, C.C.J., chairman), but that award is not persuasive here because the collective agreement there in question was quite different. It provided that the right to "reporting in" pay only accrued to an employee reporting to work "but for whom no work at his regular job is available".

The alternate and more substantial submission by counsel for the union was that there is no reason why seniority rights on lay-off, under arts. 5.07 and 5.12, cannot apply in a fact situation where art. 17.01 also applies to guarantee "reporting in" pay. Counsel acknowledged that the *Automatic Electric* award is directly against him but asked this board to come to the opposite conclusion. This board of arbitration is not bound by the decision of any other board, although we cannot lightly disregard a decision so directly on point.

On the facts before us, to hold that art. 17.01 is applicable and that this excludes the operation of arts. 5.07 and 5.12 would be to deny the employees affected any recovery for the hours lost, because art. 17.01 guarantees nothing where the lack of work is due to "failure of water supply".

Whether or not arts. 5.07 and 5.12 apply depends on whether the grievors were on lay-off, within the meaning of that term in this collective agreement.

There is a long line of arbitration awards in which "lay-off" has been defined as "a period of being off... work". This definition, which appears in Websters Unabridged International Dictionary (2nd ed.), at p. 1403, was accepted by Mr. Justice Gale (as he then was) in *Re U.E.W., Local 527, and Peterboro Lock Mfg. Co. Ltd.* (1953), 5 L.A.C. 1617. The issue in that matter, however, was different from the issue before us. In *Re Amalgamated Meat Cutters, Local 633, and Vaunclair Purveyors Ltd.* (1963), 13 L.A.C. 369 [note], an arbitration board chaired by Professor H.W. Arthurs is reported to have decided that "a lay-off must be regarded as any period during which employees are required to cease working and includes being sent home from work as little as 15 minutes before the end of a regular

working period". In that matter too the issue appears to have been somewhat different.

In *Re U.A.W., Locals 439, 458, 636, and Massey-Ferguson Ltd.* (1960), 11 L.A.C. 33 (W.S. Lane, C.C.J., chairman), in which the issue was the same as the one before us, the chairman stated, at p. 37;

> "Without some definition of lay-off contained in the collective agreement, we have to rely upon our understanding of the word in its ordinary meaning, and it would seem to us that a lay-off is complete when the company notifies a workman that he will not be required either for a definite period of time or for an indefinite period of time. In this instance, there was a notification of the six workmen at least that they would not be required for the second half of the shift. In our opinion, this constituted a lay-off unless the parties had agreed to some other definition of lay-off which is in the agreement itself or which by implication of law can be read into the agreement."

The view that a period of being off work is a lay-off although it is for less than one full shift was accepted in three instances by His Honour Judge E.W. Cross. See *Re U.A.W., Local 112, and DeHavilland Aircraft Ltd.* (1957), 8 L.A.C. 55; *Re U.A.W., Local 439, and Massey-Ferguson Ltd.* (1962), 12 L.A.C. 235 [note], and *Re Int'l Ass'n of Machinists, Lodge 1246, and Franklin Mfg. Co. (Canada) Ltd.* (1963), 13 L.A.C. 212.

This recitation of persuasive authority for the principle that, unless that collective agreement expressly or impliedly provides otherwise, a lay-off includes a period of less than a shift is hardly necessary because His Honour Judge Anderson accepts this as his premise in the *Automatic Electric* award relied on by the company and quoted above. The learned Judge felt, however, that he was impelled by the "reporting in" provision to hold that the definition of "lay-off" was impliedly modified to exclude periods of less than a full shift. With great respect, we are unable to agree that the "reporting in" provision requires us to apply other than the normal definition of lay-off in the agreement before us.

The "reporting in" provision and the seniority provisions protect quite different employee interests. The former ensures that any employee who travels from his home to the place of work will be paid for a minimum of four hours, in compensation for his trouble and as an incentive to the company to contact him in advance if there is to be no work. The seniority pro-

visions, of course, ensure that where the work force is reduced the most senior men are the last to loose the opportunity to earn wages.

There is no inherent reason why seniority priority should be any less secure because the period of earning opportunity in question is only a few hours. However, the parties have recognized, in art. 5. 12 of the collective agreement, that readjustments to satisfy seniority may inconvenience the employer and the obligation to respect seniority is released where the period of lay-off is short. But in return the employer is obliged to make an effort to find work for employees laid-off from their regular jobs. In the case before us the employer has not made the effort, so art. 5.12 is inapplicable and normal seniority rights apply, unless there is some other basis for saying that the parties cannot have intended seniority to apply. We are unable to understand how art. 17.01, the "reporting in" provision, shows this intention. Article 17.01 ensures that *all* employees who report in get four hours work or are paid for it. The seniority provisions are concerned with which employees should be selected for the opportunity of earning wages in the remaining hours of the shift. The two provisions thus may complement one another. There is no conflict.

In the *Massey-Ferguson* award quoted above the collective agreement before His Honour Judge Lane contained a "reporting in" provision. Although his decision rested on estoppel, Judge Lane's award clearly supports our view of the contract before us. So, too, does the award by His Honour Judge Cross in the second *Massey-Ferguson* award cited above.

There are other relevant awards which might appear not to support our view. Two of them, *Re Int'l Union of Electrical Workers, Local 566, and J.A. Wilson Display Ltd.* (1964), 15 L.A.C. 21 (J.C. Anderson, C.C.J., chairman) and the *Dominion Glass* award, *supra*, in which the reasoning in the *J.A. Wilson Display* award was followed, are based on materially different collective agreements. *Re Int'l Woodworkers and A.G. Spalding & Bros. of Canada Ltd.* (1962), 13 L.A.C. 209 [note] (R.S. Clark, C.C.J., chairman), would, however, appear not to be distinguishable.

In the *Dominion Glass* award, the full report of which was provided by counsel for the company, the majority of the board held that in order to give some meaning to every part of the collective agreement before them, including the "reporting in" provision, the lay-off provisions had to be held inapplicable to periods of less than one day. The agreement there under con-

sideration was, however, different from the one before us in an important respect. There was no provision for temporary lay-off out of order of seniority and, except in the case of emergency (which was not the case before the board), the employer was required to give written notice of lay-off at least five days in advance of the effective date. *It was this notice requirement* which lead the majority of the board to hold that "lay-off" could not include periods of less than one shift without rendering the "reporting in" provision superfluous. His Honour Judge Arrell, with whom Mr. Dinsdale concurred, stated:

> "...the reference to lay-off and notice of lay-off in 3.11 [which provided for five days notice of lay-off] [must be limited] to periods of a day or more. If this were not the meaning, then all situations would be covered by 3.11 in that if an employee reported for work at his regularly scheduled starting time and there was no work for him, he would be entitled to full payment for his shift under Article 3.11 because he had not received notice of lay-off. ... Article 9.06, dealing with reporting allowance, would have no meaning unless it applied to such a situation as this where employees are deprived of work for less than one day."

In the agreement before us there is no notice requirement for temporary lay-offs and, as has been pointed out above, the seniority provisions do not cover the same ground as the "reporting in" provision. There is therefore no reason to conclude that the "reporting in" provision will be rendered superfluous unless "lay-off" is given a restricted meaning.

The majority award in the *Dominion Glass* award concludes by concurring with "the reasoning and decision of the board in *Re I.U.E.W. Local 566 and J.A. Wilson Display Limited,* 15 L.A.C. 21 and a clear, concise summary of Mr. A.A. Borovoy in his addendum". In the *J.A. Wilson Display* arbitration, which was chaired by His Honour Judge J.C. Anderson, the award was unanimous.

In his concurrence, on pp. 26-7, Mr. A.A. Borovoy states:

> "Article 8:11 requires the employer to provide one day's notice or one day's pay in the event of 'a lay-off of five working days or less'. In my view, had [the reporting in provision] not existed, art. 8.11 would have supported the grievance. ... [but] A board of arbitration is obliged to attribute *some* meaning to every provision of a collective

> agreement. If [the reporting in provision] did not apply here, it is difficult to conceive of a situation where it would apply."

As indicated by the passages quoted, under the collective agreement considered in both the *J.A. Wilson Display* award and the *Dominion Glass* award it was thought that unless the meaning of "lay-off" was restricted the *notice* provision would render the "reporting in" provision superfluous. In the collective agreement before us art. 5.11 provides for notice only in the case of a protracted lay-off, and therefore does not conflict with the "reporting in" provision.

Quite apart from art. 17.01 and the reasoning in the *Automatic Electric* and *Dominion Glass* awards, counsel for the company argued that the whole tenor of the agreement before us is such that the term "lay-off" must refer to a period of at least one shift. It was pointed out in support of this argument that art. 5.13 is framed in terms of "working days" and "shifts" and no provision is made for parts of shifts. Article 5.13 provides:

> "5.13 In any case, such waiver of seniority shall not exceed four (4) successive working days at any one time or a total of twelve (12) shifts in any one calendar year. It is clearly understood that a succession of temporary lay-offs will not be used as a means of avoiding the application of the procedures set out in this Seniority section."

We are unable to agree that the language of art. 5.13 or any other part of the agreement indicates that a period of being off work for less than one shift is not a lay-off. Parts of shifts could, if the occasion arose, be added together for the purposes of art. 5.13. Although this argument was advanced in the *Dominion Glass* case it was not adopted by the board there nor was it adopted in the *Automatic Electric* award or any other award in which a period of less than one shift has been held to be a lay-off.

There is no reason to give the term "lay-off" as it appears in arts. 5.07 and 5.12 other than its normal meaning, which is "a period of being off work," including a period of less than one full shift. It follows that the grievors were "laid off" on the day in question. Article 5.12 does not apply because no effort was made to find work for them and it was not disputed that seniority was not observed. Therefore the grievance is allowed and the grievors must be compensated for time lost.

DISSENT (Cowan)

I have had the opportunity to read a draft of the majority award in this matter. The award is complete in its recital of the factual material, and has enumerated arbitration cases with some relevance to the dispute.

At the risk of over-simplification let me briefly review the incident leading to the grievance. Due to a power failure, water pressure fell off in the plant causing a water failure. Lack of water pressure affected the operation of several machines causing them to shut down. As a result the eight grievors were sent home during their 4 p.m. to midnight shift.

The grievance protests that they were sent home, with no effort by the company to find alternate work, and claims compensation for moneys lost during the balance of their shift.

The collective agreement has three separate sections, all with a bearing on this case.

The company's position was that the "Reporting for Work" article (17.01) was to be followed where a lay-off was for less than one full shift. As a result, therefore, the application of seniority as covered in art. 5.07, or a search for other work, set out in art. 5.12, in the case of the employees affected, was not a requirement in this situation.

The union contended that the situation was governed by art. 5.12 with an obligation upon the company to locate other employment. Their second proposition was that art. 17.01 (reporting for work) and art. 5.12 could and should be read together.

The arbitration awards that were referred to by the parties are quoted and cited fairly completely in the majority award. It is in considering these awards, and the weight that should be given to them, I separate from my colleagues. In particular, I would have found that the decision of the board under Judge Anderson in *Automatic Electric (Canada) Ltd.* on a similar grievance and with similar contractual wording was more persuasive. While I realize that board awards involving different agreements and parties are not compelling upon subsequent or other boards, in this case I find the reasoning and decision of the Anderson award compelling in a logical sense. (The appropriate paragraph from the Anderson award is quoted in the majority award.) As a consequence, therefore, I would have dismissed the grievance.

It might be noted, that while the company reply to the grievance stated in part, "You were sent home because other departments were similarly effected; therefore no other work was

available.", no evidence was forthcoming on this point, and it was agreed by the parties for the purposes of this hearing that no endeavour had been made by the company to seek alternative employment for the grievors. In point of fact, the case was presented to the board entirely as a question of interpretation of the contractual provisions of the agreement, and their application.