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IN THE MATTER OF AN ARBITRATION:

BETWEEN:

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF
CANADA, LOCAL 434

(The Union)

and

ABT BUILDING PRODUCTS CANADA LIMITED
CANEXEL HARDBOARD DIVISION

(The Employer)

RE: C.E.P., Local 434

(The Grievor)

Policy Grievance - Spare Boiler Operator

BEFORE: Innis Christie, Arbitrator

AT: Chester, N.S.

DATE OF HEARING: June 15, 2000

FOR THE UNION: Dennis Grant, National Representative, Communications,
Energy and Paperworkers Union of Canada
Roger Collicut, President, Local 434
David Broome
Floyd Shatford

FOR THE EMPLOYER: Lynn M. Walsworth, counsel
Stephanie J. Thompson, counsel
Phil Ellwood, Plant Manager
Bill Fisher, Facilities Manager
Helen Whitehouse, Human Resources Manager

DATE OF AWARD: December 19, 2000

Union policy grievance alleging breach of the Collective Agreement between the parties effective March 9, 1998 - December 15, 2002 in that the Employer breached Articles A2, A2.03, 5.05 and 5.10 by having the Spare Boiler Operator perform duties not pertaining to his job classification. The Union sought a declaration of the work the Spare Boiler Operator can properly perform under the Collective Agreement.

Mr. Jim Flemming, the Spare Boiler Operator when this Grievance was heard, was given notice of the hearing in this matter and of his right to be present and to participate, by telephone by the Arbitrator on May 17, 2000, and by letter mailed that day. Mr. Flemming did not appear.

At the outset of the hearing in this matter the parties agreed that I am properly seized of it, that I should remain seized after the issue of the award to deal with any matters arising from its application, and that all time limits, either pre- or post-hearing, are waived.

AWARD

The Employer employs five Boiler Operators on a regular basis. Two are required for a 24 hour operation, one for each 12 hour shift. Four Operators are required to cover a full week of boiler operation and a fifth operator is employed to relieve when a regular Operator is off work, due to vacation, sickness, floating holidays, etc. In the Collective Agreement Boiler Operators are classified as Stationary Engineers, Boiler and Compressor Plant, in the Maintenance Department.

In January of 1999, the Union became aware that Rick Bell, who was then the 5th or Spare Boiler Operator, had been assigned functions not related to steam and boiler operation that could be performed by a labourer. He was helping a carpenter put siding on the gate house. The Union was subsequently told by the Employer that it intended to assign duties to the Spare Boiler Operator as it saw fit, to keep him employed. For the Union, Mr. Grant emphasized that it was this assertion that is the subject of the Grievance before me.

The occurrence of this incident was established by the testimony of Rhead Brown, who is and was a shop steward. When it was brought to his attention that Rick Bell was helping a carpenter put siding on the gate house he raised the issue with William Fisher, who was then the Steam Plant Superintendent. Mr. Fisher told him that he could assign the Spare Boiler Operator wherever he wanted when the Spare Boiler Operator was not performing steam plant duties, and that the Spare Boiler Operator would be put through an apprenticeship programme for the maintenance department. Randall Dagley was the qualified carpenter with whom Bell worked on that occasion. He testified that he was normally assisted by helpers in the Maintenance Department or by employees from the labour pool.

As a result, the Union filed the Grievance on February 3, 1999, and here seeks the following declaration:

The 5th / Spare Boiler Operator when not on shift (as a Boiler Operator) can perform work WITH the Maintenance Department on Steam and Boiler related items. When there is no work as defined above, he shall have the same rights as any other Maintenance employee and be laid-off (and bumping rights apply) or be placed in the Labour Pool and work as work becomes available in other areas of the plant by his Plant Seniority. Article 5:07(h)

According to the Employer the present incumbent of the 5th or Spare Boiler Operator position is a Stationary Engineer 1st Class, who is paid as such for all the work he does, and is partially qualified as an industrial mechanic. According to the Employer he spends about half his time acting as Boiler Operator, a quarter on steam and boiler maintenance and the other quarter on other maintenance, mostly industrial mechanic's work. It is undisputed that it is the quarter of the Spare Boiler Operator's work done on other maintenance that is in issue here.

The Employer's position is that management can assign whatever maintenance duties it wishes to those in the Maintenance Department as long as no senior employee is displaced and it asserted that no tradesmen have been displaced by the work assigned to the Spare Boiler Operator. It asserts that there is no language in the Collective Agreement to support the Union's position that management cannot assign maintenance duties outside those of an employee's job classification.

The relevant provisions of the Collective Agreement are:

ARTICLE 3

MANAGEMENT RIGHTS

- 3.01 The Company retains the right to manage the plant in all respects except as specifically limited by this Agreement.
- 3.02 The Company retains the right to establish from time to time rules and regulations governing the employees covered by this Agreement providing that such rules and regulations are not inconsistent with the provisions of this Agreement.

ARTICLE 4

SENIORITY

4.01 Seniority is defined as follows:

- (a) Plant Seniority: All time an employee has been employed in the East River Plant without a break as defined below.
- (b) Job Seniority: All time an employee has been classified on a job in the plant without a break as defined below.
- (c) Department Seniority (Maintenance): All time an employee has been classified in the Maintenance Department. ...

ARTICLE 5

PROMOTION, LAY-OFF AND RECALL

- 5.01 Lines of progression have been established in the plant. Promotions from the first Step to the last within a line of progression shall be based on job seniority subject only to the senior employee being able to fulfill the normal requirements of a job following a trial and/or training period unless the Company and the Union agree that irrespective of a trial and/or training period such employee cannot fulfill the normal requirements of the job. Duration and nature of trial periods and training periods referred to in the sub-paragraph shall be determined by mutual agreement by the Company and the Union shall not in any case exceed a period of thirty (30) working days. ...
- 5.04 When a temporary vacancy of less than fourteen (14) days occurs and there is an employee in the same line of progression, fully qualified and capable of filling the vacancy, promotion will be made from the employees in the same line of progression in which the vacancy occurs, in the following manner:

FIRST

The employee will move up the Line of Progression, and the bottom job will be filled at straight time rates.

SECOND [etc]

[on overtime by awarded in accordance with this provision]

5.05 All temporary vacancies expected to last (14) days or more shall be filled as follows:

- a) The most senior employee in the plant classified in the job will be scheduled to fill the job vacancy.
- b) Those employees trained in spare jobs shall, as assigned by management, fill a temporary vacancy.
- c) If nobody meeting the requirements of a) and b) above is available, the line will move up and the entry job will be filled from among qualified employees in the labour pool based on plant seniority.
- d) If the job cannot be filled through a) b) and c) above, it will be posted as a temporary vacancy.
- e) "Spare" jobs are not open to skilled trades.

...

5.10 When a vacancy occurs in the bottom job in any line of progression the Company shall post on the bulletin board a notice concerning the job vacancy; such posting shall be for a period of fourteen (14) calendar days and the Company shall have the right to make a temporary appointment without grievance. Such notice shall indicate the qualifications essential for the job and will also state the qualifications necessary for promotion within the line of progression.

5.11 In selecting the employee to fill the vacancy from the applicants, the Company shall be guided by the factors set out in paragraph 5.01 of this Article. The successful applicant shall be in the new position within fifty (50) days of the job posting expiry date.

In addition to Rheed Brown and Randall Dagley, the Union called as a witness Roger Collicut, President, Local 434. Mr. Collicut was involved in the last round of

collective bargaining. As Mr. Collicut testified, the Collective Agreement covers two groups of employees, production employees and maintenance employees. Appendix A contains the “Hours of Work and Wage Rate Schedule” and Article A2 is headed “JOB CLASSIFICATION AND HOURLY RATE SCALE”, A2.01 for production employees, Classes I-XII, and A2.02 for the “MAINTENANCE DEPARTMENT”, as follows;

MAINTENANCE DEPARTMENT [dates at which various wage rates are payable]
 Knife Grinder & Saw Repair [wage rates are set out in columns below dates]

Grinderman

Painter-Insulator

Oiler

Tradesmen, Class A

Tradesmen, Class B

Tradesmen, Class C

Tradesmen, Helper A

Tradesmen, Helper B

Tradesmen, Helper 2

*Water Treatment Plant Operator

...

1st Class Stationary Engineer,
 Boiler & Compressor Plant

2nd Class Stationary Engineer,
 Boiler & Compressor Plant

3rd Class Stationary Engineer,
 Boiler & Compressor Plant

NOTE 1: Tradesmen are: Mechanics, Welders, Instrument Men, Machinists, Electricians (Motormen). and Carpenters.

NOTE 2: Tradesmen-Helper 2 who are not enrolled in an apprenticeship program will be the only employees bumpable in the Maintenance Department.

Article 5.07 of the Collective Agreement deals with the elaborate bumping rights of employees within the various “lines of progression” referred to in Article 5:01, 5.10 and 5.11 in the plant. With respect to the Maintenance Department Article 5.07(h) provides;

- h) In the case of a reduction of the work force in the maintenance department, the employees displaced will be the ones having the least departmental seniority in the trade in which the reduction occurs.

On the face of it, then, there is bumping in the Maintenance Department, but, for qualified tradesmen, only within trades based on departmental seniority, except for non-apprenticed helpers. This is the significance of “NOTE 2”, above. Under cross-examination Mr. Collicut noted that the position of “Helper” in the Maintenance Department is “bumpable” and is the only position there that is “bumpable”.

Article 5.07 (j), which was included in the current Collective Agreement at the Employer's request, provides;

- j) Notwithstanding anything else to the contrary in this Collective Agreement, the position of the Water Treatment Plant Operator is not subject to the bumping provision of Article 5.

The Union stressed that it is not grieving the job posting or the selection of the present incumbent of the position of Spare Boiler Operator. In fact the Grievance was filed prior to the present incumbent being given the job.

The Union's claim is that the primary function of the Spare Boiler Operator is to operate the boiler room when a regular shift Boiler Operator is away and, when not doing so, to work with the Maintenance Department on steam and boiler related items. Its position is that the evidence supports this understanding of the Spare Boiler Operator's duties. In the Union's submission;

1. Job Posting provisions indicate, and have always indicated, the duties of the position.
2. Evidence of past practice shows a consistent pattern of the duties to be performed by the Spare Boiler Operator.
3. Discussions, with and letters from the Employer and grievance settlements clearly indicate the scope of the Spare Boiler Operator's job.

Roger Collicutt identified the following job posting:

All Boards
Gene Seaboyer
Bill Fisher
Roger Collicutt
Barry Bunch

JOB POSTING
TO BE POSTED FOR 14 CALENDAR DAYS

FROM August 19, 1998 TO September 1, 1998 INCLUSIVE

Applicants may obtain application forms from the Personnel Office and Return

Them within the 14 calendar days.

DEPARTMENT:	<u>Boiler Room</u>
JOB:	<u>2nd Class Stationary Engineer</u>
RATE:	<u>\$17.79</u>
DAY OR TOUR:	<u>Tour (12 hour shifts)</u>
QUALIFICATIONS FOR JOB:	<u>1. Must possess a Valid Nova Scotia</u> <u>Second Class License.</u>

- 2. Be in good physical condition
- 3. Be willing to attend training courses
- 4. Attendance Record will be taken into consideration.
- 5. Work with Maintenance Department on steam and Boiler related items, when not on shift

In selecting the employee and/or employees to fill the vacancy and/or vacancies from the applicants, the Company shall be guided by factors set out in Paragraph 5 :0 1 of the Labour Agreement except for the specifications and qualifications covering Tradesmen and Tradesmen Helpers, which qualifications are determined by the Nova Scotia Department of Labour: Apprenticeship and Tradesman, Qualifications Division Apprenticeship & Tradesmen Qualification Act.

Mr. Collicut testified that, although the posting does not specify “Spare”, it is the one that “we’d used for years”. In general terms the same posting would have been used for a regular Boiler Operator, he testified, but item # 5 made it clear that this one had been for the Spare Boiler Operator.

Mr. Collicut explained that “regular” production employees are full-time, have a work schedule, know where they go from week to week and are not in the labour pool. Each is in a “line of progression” referred to in Articles 5:01, 5:10 and 5:11, set out above. Labour pool employees are on a list and fill in where needed, for those on vacation on absent for any other reason. Employees in the labour pool have no classification. Their names appear on the seniority list with just their employee number and the date they started, with no department and no job seniority. When there is a reduction in the work force bumping down ends in the labour pool. Article 5.05(c) gives labour pool employees rights based on plant seniority.

Some employees, spare fork lift operators for example, have obtained a classification through a posting and return to the labour pool when not working in that capacity. They are listed in the labour pool by plant seniority, but would get work in their line of progression, as a fork lift operator as example, ahead of a more senior employees who did not have the qualifications necessary for that job.

If the Maintenance Department is reduced a maintenance worker can bump into a position as a maintenance helper if he or she has enough seniority in the maintenance department, bump into or a production position if he or she has seniority in a line of progression, bump into the labour pool, or take a lay-off with recall rights into the Maintenance Department only.

The Spare Boiler Operator, Mr. Collicut testified, is not “spare” in the sense used in Article 5.05(b) set out above, because a stationary engineer is a skilled trade for purposes of 5.05(e). According to him there is a history, however, of the Employer using the person in that position to do other than steam or boiler related jobs. The Union has always protested, and the Employer has always complied, temporarily.

Over the objection of Mr. Grant for the Union, counsel for the Employer introduced into evidence through Mr. Collicut the Union's written proposals at the last round of bargaining. It included the following, which was not included in the current Collective Agreement:

51. New as follows: Note 7: Spare Boiler & Compressor Plant Operator - Page 40
When the Spare Boiler & Compressor Plant Operator is not operating the Boiler,
he shall hold a position within the Maintenance Department and that position shall
be bumpable.

The effect of this, Mr. Collicut agreed, would have been that the Spare Boiler Operator would have become “bumpable”, like a helper in the Maintenance Department. Both the incumbent Spare Boiler Operator in 1998 and the current incumbent have very low seniority, so that bumping would probably have resulted in them going to the labour pool. He stressed that while the effect of the proposal would have been that the Spare Boiler Operator would have gone to the labour pool whenever he was not working as boiler operator, the Grievance here, if allowed, would only have that effect when he was not doing boiler or steam related work in accordance with the job posting as set out above.

I have concluded that there is sufficient ambiguity on the seniority provisions quoted above, as applied to the issue here, to justify the admission of extrinsic evidence as an aid to its interpretation. Accordingly, the Union proposal with respect to the Spare Boiler Operator, which did not become part of the current Collective Agreement, is part of the evidence before me here. That said, I do not think the bare fact that the Union made this proposal and it was not included in the Collective Agreement assists me.

Counsel for the Employer called as her only witness William Fisher, who was the Steam Plant Superintendent when this Grievance was filed and is now the Facilities Manager. Mr. Fisher testified about the importance of steam to the operation of the plant. The Department of Labour requires that there be two Stationary Engineers 2nd Class on duty at all times, so it is necessary to employ five. Because the 5th or Spare Boiler Operator spends only 50% of his time in relief of the others and is available to do maintenance throughout the plant the rest

of his time the Employer wants him to have a second credential. Mr. Fisher testified that Jim Flemming, the current incumbent, has completed two of the four steps to become an industrial mechanic.

Mr. Fisher testified that Jim Flemming spends about half his time acting as Boiler Operator, a quarter on steam and boiler maintenance and the other quarter on other maintenance, mostly industrial mechanic's work. He testified that other skilled tradesmen in the plant do work outside their trades, citing the example of welders painting their work. The Spare Boiler Operator, he said, has worked with every trades person in the Maintenance Department. This issue, he agreed, has a long history.

Under cross-examination, Mr. Fisher asserted that the job description in the job posting set out above, which he had read and approved, was "a summary" and was not intended to be all-inclusive. It also became clear in cross-examination that "steam and boiler related items" is a broad phrase, including, for example, anything associated with the burning of "dust" to fuel the boilers, with any part of the heating system of the plant or with any of the machinery that is steam powered.

The Issue. The Union's position is that the Spare Boiler Operator was and is limited to working on "steam and boiler related items", which, while it is a broad phrase, does have obvious limits which cannot be abused, as they were in the case of Rick Bell helping the carpenter. The Spare Boiler Operator is precluded from doing other Maintenance Department work where a more senior tradesman is on lay-off or has been bumped out of the Maintenance Department, and he cannot do labour pool work where there are more senior employees in that pool who are not

working. The Employer's position is that the Spare Boiler Operator can be assigned to do any work in the Maintenance Department as long as no tradesman is displaced, including labour pool work.

Decision. I agree with Mr. Grant, for the Union, that the “policy” resolution of the differences between the positions of the Union and the Employer here lies in the summary of the arbitral jurisprudence found in para. 5.2000 of Brown and Beatty, *Canadian Labour Arbitration* (3rd ed., looseleaf). The question is whether, in assigning the 25% of the Spare Boiler Operator’s tasks that are not “steam and boiler related”, the Employer infringes any of the express or implied limitations on its management rights under Article 3.01 and 3.02, as described by the learned authors: (edited as noted and footnotes omitted)

5.2000 DISTRIBUTION OF WORK WITHIN THE BARGAINING UNIT

...management may also perceive a need to reorganize the procedures and methods of performing work within the bargaining unit. As a general presumption, arbitrators have taken the view that where reorganization is not contrary to the general law, where it is done in good faith, and where it does not contravene clear prohibitions in the agreement, management is free, subject to such overriding principles as waiver, to reorganize the work procedures and methods within the bargaining unit as it requires. And this is so whether the assignment of work is temporary or permanent. And whether it is within a job classification or crosses classification or departmental lines. ...

However, many provisions of the collective agreement, while not prohibiting reorganization as such, will bear upon and affect the changes made. Again, in these circumstances, the provisions relating to transfer, lay-off and recall and job posting may come into play, particularly if a vacancy occurs. Similarly, although it is generally assumed that the employee does not have a proprietary right to his job, nevertheless the seniority provisions in the collective agreement may give him a relative right to the job as a whole, and they may limit such reorganizations accordingly. As well reorganization may be constrained by wage structure. While such provisions rarely prohibit reorganizations, they require that wages be paid pursuant to their terms. Taken together, these provisions may fetter management’s ability to effect such

changes by requiring that a certain wage be paid or certain procedures be followed. ...

The arbitral authorities relied on by Ms. Walsworth, the Employer's counsel, all make these same points, mainly drawn from the classic decision of the majority of the Board of Arbitration chaired by Paul Weiler in *Re United Steelworkers and Algoma Steel Corp.* (1968), 19 LAC 236. In particular *Re IAM and AW, Local Lodge 717T and Hawker Siddley of Canada: Orenda Division* (Gorsky) (1997) (unreported) demonstrates the reliance of both the employer and union, as well as of the learned arbitrator, on the principles enunciated many years ago by the Weiler Board .

Is the assigning to the Spare Boiler Operator of tasks 25% of which are not "steam and boiler related" "contrary to the general law" or not "done in good faith"? Or does it "contravene clear prohibitions in the agreement"? If not, there being no evidence of or argument here with respect to waiver or the like, "management is free...to reorganize [its] work procedures ...as it requires. And this is so whether the assignment of work is temporary or permanent."

There was no suggestion that the Spare Boiler Operator is ever assigned to do work which, by law, requires a trade qualification he lacks, or that his assignments are otherwise contrary to the general law. While his disputed assignments have been made without acknowledging the limitations asserted by the Union, the Employer has not done so "in bad faith", as that phrase is used here; that is without valid business reasons. On the evidence, the Employer has made and does make the disputed assignments in order to fully employ the Spare Boiler Operator, paying him always at his rate under the Collective Agreement, which is higher than that

which would be paid to those the Union asserts should have been doing the work. There is obviously a good business reason for organizing a required employee's workload such that he or she has a full shift. This does not justify the Employer infringing any of the express or other implied limitations on its right to assign work, but it does constitute a good faith reason for the assignment of work in the absence of any other limitation.

The serious question here, therefore, is whether the assignments the Employer has made, and wishes to continue to make, to the Spare Boiler Operator "contravene clear prohibitions in the agreement".

There are no job descriptions in this Collective Agreement so the Union has based its case in large part on the job description in the job posting of August 19, 1998, for the Spare Boiler Operator's job had the effect of freezing the content of that job. I can find no basis in the Collective Agreement for suggesting that it did. Article 5.10 requires only that the posting indicate the qualifications essential to the job and for promotion within the line of progression into which it falls. Article A2.02 is equally silent. Without suggesting that this silence constitutes ambiguity, I note that on the evidence there is no clear past practice on the scope of the Spare Boiler Operator's job, because this is a long standing source of dispute between the parties. It can certainly not be said that the Employer has never made work assignments of the sort to which the Union takes objection. Nor, of course, can it be said the Union has impliedly accepted the Employer's right to make such assignments, but that simply throws the matter back to the "general presumption ...that ... management is free...to reorganize the work procedures and methods

within the bargaining unit as it requires...whether the assignment of work is temporary or permanent.”

In some circumstances and under some collective agreements this general presumption must give way to the collective agreement seniority provisions. Article 5.11 and 5.01 are the general seniority provisions in this Collective Agreement and Articles 5.04 and 5.05, set out above, apply to temporary vacancies of less than 14 days and 14 days or more respectively. Their application in the Maintenance Department generally is not clear on the face of the Collective Agreement (although Article 5.07(h) provides some guidance) but I do not need to address that because the Union has raised no issue with respect to boiler and steam related work done in the Maintenance Department and the Employer has not displaced any tradesman by assigning work to the Spare Boiler Operator.

Do these seniority provisions limit the Employer's right to assign the Spare Boiler Operator to non-boiler and steam related work in the Maintenance Department that would otherwise be done by a “bumpable” helper, or the Employer's right to assign him to work that would otherwise be done by someone in the labour pool?

With respect to “bumpable” helpers in the Maintenance Department, it will be recalled that NOTE 2 to Article A2.02 in Appendix A provided that “Tradesmen-Helper 2 who are not enrolled in an apprenticeship program will be the only employees bumpable in the Maintenance Department.” I take this to mean that they are in the labour pool line of seniority. The final issue, then, is whether the seniority provisions of this Collective Agreement prevent the Employer from assigning the Spare Boiler Operator to do work to which would otherwise be done

by a member of the labour pool. This Collective Agreement has very detailed seniority provisions which, by Article 5.01, appear to incorporate by reference the lines of progression that “have been established in the plant”. Article 5.01. provides:

- 5.01 Lines of progression have been established in the plant. Promotions from the first Step to the last within a line of progression shall be based on job seniority subject only to the senior employee being able to fulfill the normal requirements of a job following a trial and/or training period ...

Article 5.01 does not specify what work is to be done by members of the labour pool.

With respect to “a vacancy”, on the face of it Article 5.01, and 5.10, 5.11, apply only to seniority in “lines of progression”.

- 5.10 When a vacancy occurs in the bottom job in any line of progression the Company shall post on the bulletin board a notice concerning the job vacancy....
- 5.11 In selecting the employee to fill the vacancy from the applicants, the Company shall be guided by the factors set out in paragraph 5.01 of this Article. ...

The same is true of Article 5.04, with respect to temporary vacancies expected to last less than 14 days. It too appears to apply only to seniority in lines of progression.

- 5.04 When a temporary vacancy of less than fourteen (14) days occurs and there is an employee in the same line of progression, fully qualified and capable of filling the vacancy, promotion will be made from the employees in the same line of progression in which the vacancy occurs, in the following manner:

FIRST

The employee will move up the Line of Progression, and the bottom job will be filled at straight time rates.

However, Article 5.05, with respect to vacancies expected to last 14 days or more, clearly contemplates filling vacancies ultimately from the labour pool.

5.05 All temporary vacancies expected to last (14) days or more shall be filled as follows:

- a) The most senior employee in the plant classified in the job will be scheduled to fill the job vacancy.
- b) Those employees trained in spare jobs shall, as assigned by management, fill a temporary vacancy.
- c) If nobody meeting the requirements of a) and b) above is available, the line will move up and the entry job will be filled from among qualified employees in the labour pool based on plant seniority.

The labour pool, therefore, is a source from which, *subject to their qualifications and capabilities*, employees with seniority rights move to vacancies, permanent or temporary. Does the Employer in assigning the Spare Boiler Operator to do non-steam or boiler related work interfere with those seniority rights, contrary to what the parties to this Collective Agreement must be taken to have intended?

Brown and Beatty, as quoted above, state that “provisions relating to transfer, lay-off and recall and job posting may come into play, particularly if a vacancy occurs.” I do not understand the Employer to be claiming to be able to use the Spare Boiler Operator to fill vacancies expected to last 14 days or more. But if a Spare Boiler Operator without seniority were to be assigned to work in what would

otherwise constitute a temporary vacancy of 14 days or more and therefore go to the most senior employee classified in the job according to Article 5.05(a), or to a spare employee according to Article 5.05(b), or to an employee in the labour pool by virtue of 5.05(c), that would appear to me to interfere with their seniority rights. The same would be true of filling a non-temporary vacancy under Articles 5.10, 5.11 and 5.01. Although, as Brown and Beatty say, it is generally assumed that that an employee does not have a proprietary right to his job, the seniority provisions in this Collective Agreement do give employees “a relative right to the job as a whole”, and they “limit ... reorganizations accordingly”. In cases of vacancies of 14 days or more the “job as a whole” would be at stake.

If the Spare Boiler Operator were to be assigned to non-boiler and steam related work for a shorter period the question would be whether there was “a temporary vacancy of less than fourteen (14) days” such that the work would otherwise have gone to “an employee in the same line of progression” by virtue of 5.04. There is nothing in Article 5.04, or elsewhere in this Collective Agreement, to prevent the assignment for less than 14 days to the Spare Boiler Operator of work not in a line of progression. My assumption is that the labour pool is not “a line of progression” “established in the plant” in accordance with Article 5.01 and referred to in 5.04. On this assumption labour pool work can be assigned to the Spare Boiler Operator for less than 14 days without infringing anyone’s seniority.

If, on the other hand, the labour pool is “a line of progression” “established in the plant” in accordance with Article 5.01 and referred to in 5.04, the assignment of the Spare Boiler Operator“ to a temporary vacancy of less than fourteen (14) days could breach labour pool seniority rights, subject, of course, to their qualifications

and capabilities. However, even if the labour pool is “a line of progression”, not every incidental assignment of work implies that there was a vacancy, as I held in my award between these parties in *RE: Randy Cook, Work Assignment, Loss of Overtime Opportunity*, (unreported , Jan. 25, 1998).

Conclusion and Order. The Union's Policy Grievance is denied in the sense that I do not make the order sought, which was:

The 5th / Spare Boiler Operator when not on shift (as a Boiler Operator) can perform work WITH the Maintenance Department on Steam and Boiler related items. When there is no work as defined above, he shall have the same rights as any other Maintenance employee and be laid-off (and bumping rights apply) or be placed in the Labour Pool and work as work becomes available in other areas of the plant by his Plant Seniority. Article 5:07(h)

However, I do order that Spare Boiler Operator not be assigned to fill vacancies expected to last 14 days which would otherwise be filled by the most senior employee classified in the job according to Article 5.05(a), or to a spare employee according to Article 5.05(b), or by more senior member of the labour pool, including a “bumpable helper”, by virtue of 5.05(c), or to fill a non-temporary vacancy under Articles 5.10, 5.11 and 5.01.

On the assumption that the labour pool is not “a line of progression” “established in the plant” in accordance with Article 5.01 and referred to in 5.04, labour pool work can be assigned to the Spare Boiler Operator for less than 14 days without infringing anyone’s seniority.

If the labour pool is in fact “a line of progression” “established in the plant” in accordance with Article 5.01 and referred to in 5.04, the assignment of the Spare

Boiler Operator“ to a temporary vacancy of less than fourteen (14) days could breach labour pool seniority rights if it were more than an incidental assignment.

As agreed at the outset, I will retain jurisdiction to deal with any questions arising out of the interpretation of this Award, including specifically an allegation by the Union that the labour pool is in fact “a line of progression” “established in the plant” in accordance with Article 5.01 and referred to in 5.04.

Innis Christie

Arbitrator

22P