

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 DUO-SAFETY LADDER CORPORATION : Case 23
 : No. 46954
 and : A-4880
 :
 THE UNITED STEELWORKERS OF AMERICA, :
 AFL-CIO, UPHOLSTERY AND ALLIED :
 INDUSTRIES DIVISION, LOCAL 352U :
 :

Appearances:

Mr. Brian Lee Mares, Attorney at Law, Steinhilber, Swanson, Mares,
 Curtis, Marone & Wolk, 219 Washington Avenue, P.O. Box 617, Oshkosh,
Mr. Philip Schwab, President, Duo-Safety Ladder Corporation, 513 West
 Ninth Avenue, Oshkosh, Wisconsin 54901, appeared on behalf of the
 Company.

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ARBITRATION AWARD

On February 5, 1992, the Wisconsin Employment Relations Commission received a request from the United Steelworkers of America, Upholstery and Allied Industries Division to provide an arbitrator to hear and decide a grievance. Following jurisdictional concurrence from the Employer, Duo-Safety Ladder Corporation, the Commission on April 9, 1992, appointed William C. Houlihan, a member of its staff, to hear and decide the matter. A hearing was conducted on May 6, 1992 in Oshkosh, Wisconsin. The matter was not transcribed, nor was it briefed.

This award addresses the layoff of employe Gary Baumann.

BACKGROUND AND FACTS:

Gary Baumann, the grievant, has been employed by the Company as a welder since January 10, 1977. Baumann is one of 5 welders, 3 of whom do complete ladder welds. Baumann does not do complete ladder welds, rather he welds a part of a ladder in a booth. If someone calls in sick or is otherwise absent, Baumann may, on occasion, fill in for that individual. Baumann's full-time employment consists of welding "500 Series" ladders. He welds and carries finished ladders. Typically, his job requires him to carry no more than 25 pounds. On rare occasion, he handles somewhat heavier ladders running as much as 75 pounds.

In approximately 1989 Baumann was injured and had surgery on his back. He returned to work with a lifting restriction. Originally, that restriction was 30 pounds, though it was thereafter increased. In 1989, the Company provided Mr. Baumann a shield to be used in lieu of the typical welding helmet, as an accommodation to Mr. Baumann's back injury.

During the summer of 1991, the Company experienced a lull in its business. It reduced the workweek of its entire work force from 40 hours per week to 32 hours per week. In approximately August of 1991, the Company determined that it would return to a 40 hour work week, and lay off certain employes. During that same period of time, Mr. Baumann went to see his neurosurgeon about his back. On or about August 6, 1991, Baumann brought a letter from his physician indicating that he had had a myelogram on August 5 and requesting that he not return to work until August 7. On August 19, 1991, Baumann brought a second slip from his physician which provided as follows: "I recommend that this patient of mine should be on full-time light duty." At the

time, Baumann was supervised by Fred Starr, the General Foreman. According to both Starr and Baumann, the two men talked after Baumann provided Starr with the two medical notes. Starr asked Baumann what light duty meant. Baumann replied that he did not know. According to Starr, Baumann was performing the lightest duty in the shop. Starr further testified that neither he nor Baumann knew how long light duty status would continue, and assumed it would be indefinite. Starr requested Baumann to get more information on the duration of the light duty period and what if any, weight restrictions existed. It appears that no further information was forthcoming.

On or about August 29, 1991, Company management met to determine who would be laid off. At that meeting it was determined that Baumann would be laid off and that he would be laid off for health reasons. The parties stipulated that Mr. Baumann's work production was the equivalent of his co-workers. They further stipulated that Mr. Baumann was not laid off for production reasons.

According to Gary Baumann, he did all work requested of him. Baumann testified that he could perform all duties assigned. He indicated that he had never turned work down. He indicated that during August he had performed his job as he had prior to the August physician slips. According to Baumann, he was afforded no special treatment because of his injury. Baumann indicated that he was capable of performing all welder duties even with the restrictions imposed by the physicians.

Starr testified that Baumann was basically a "500 Series" welder. According to Starr, but for his physical problems, Baumann would have been asked to do other and heavier welding. According to Starr, there was sufficient booth welding to occupy Baumann's time for the two-year period prior to August, 1991. According to Starr, there was not such work subsequent to August of 1991. Starr acknowledges that Baumann did whatever he was requested prior to August of 1991. He further acknowledges that Baumann never refused to do a job and that the man never indicated he was unable to do a job.

In August, just before the period of layoff, Baumann advised Starr that he (Baumann) would shortly be having neck surgery.

ISSUE:

The parties stipulated to the following:

Did the layoff of Mr. Baumann on August 28, 1991, violate Article 4, Section 2 of the collective bargaining agreement?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT:

ARTICLE IV - SENIORITY

. . .

Section 2

In all cases of promotion, or increase or decrease of forces, the following factors shall be considered, and where factors (B) and (C) are relatively equal, length of continuous service shall govern:

- (A) Length of continuous service.
- (B) Training, skill and efficiency.
- (C) Physical fitness.

DISCUSSION:

Baumann was laid off, notwithstanding the fact that he was more senior than at least two other welders. Article 4, Section 2(c) reflects an agreement by the parties that physical fitness is a substantial factor in decisions regarding layoff. The question arises, as to whether Baumann's physical fitness was relatively equal to that of his co-workers. In August of 1991, it appears that it was not. Baumann had gone through back surgery. He was operating with restrictions for a good portion of the time that preceded his layoff. It further appears that he was scheduled for surgery approximately one month hence.

The parties stipulated that Baumann's production was the equivalent of his colleagues. I take "production" to be an equivalent of paragraph (b)'s use of "efficiency". It appears to me that Baumann, notwithstanding his physical problems, was capable of performing the "500 Series" work as efficiently as were his co-workers. However, the contract has three provisions to be examined. Factors (b) and (c) must be considered first and must be relatively equal before factor (a) constitutes a tie-breaker. There is nothing in this record that suggests that Mr. Baumann was as physically fit as his co-workers.

To the contrary, it appears that he was not as fit as his co-workers and that at times the Company shied away from giving him heavier work because of his restrictions.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 21st day of May, 1992.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator