

Communications
Workers of America
District 3
AFL-CIO

Alabama, Florida, Georgia
Kentucky, Louisiana, Mississippi
North Carolina, South Carolina
Tennessee, Puerto Rico

3516 Covington Highway
Decatur, Georgia 30032
404-296-5553 Fax 404-299-6165



May 21, 2019

To: All District 3 Staff & Secretaries
All AT&T SE Local Presidents

From: Billy O'Dell, Administrative Director to the Vice President

RE: ARBITRATION AWARD & SYNOPSIS
Grievance #: B17032-3315
Arbitration #: B3-2018-023
Grievant: Promotion Bypass-**Union Won**

Attached is a copy of the Arbitration Award rendered by Arbitrator Paul Glendon who ruled in favor of the Union on May 13, 2019

Also attached is a copy of the Synopsis from Robert Weaver, District Counsel

cc: R. Honeycutt, Vice President
N. Hawkins, Assistant to the Vice President
A. Wells, Administrative Director
R. Weaver, District Counsel

WOD:mbm
opeiu#2 AFL-CIO

**Communications
Workers of America
District 3
AFL-CIO**

**Alabama, Florida, Georgia.
Kentucky, Louisiana, Mississippi
North Carolina, South Carolina
Tennessee, Puerto Rico**

**3 516 Covington Highway
Decatur, Georgia 30032
404-296-5553**



May 16, 2019

TO: William O'Dell, Administrative Director to the Vice President

FROM: Robert Weaver, District 3 Legal Counsel

SUBJECT: Grievant – Scott Mayhew
Grievance # B17032-3315
Case # B32018-023
Issue: Promotion Bypass – **Union Won**

SUMMARY

This selection case was initiated by Local 3212 in 2017, alleging that the Company's bypass of Grievant Scott Mayhew for a vacant Facilities Technician position in Construction in Paducah, Kentucky was arbitrary. Mr. Mayhew already held the FT title, but worked in I&M. He was bypassed for a junior Outside Plant Technician who worked in Construction. The Company Selector selected the junior OPT based on the fact that he had one week of fiber splicing training and had been trained on how to use Construction record-keeping device. CWA argued that the Selector's failure to investigate and consider Mr. Mayhew's experience working side-by-side with Construction crews and his experience splicing fiber (albeit without formal fiber splicing training) was arbitrary for purposes of Article 12 of the parties' CBA.

Arbitrator Paul Glendon sustained the grievance, and directed the Company to remedy its arbitrary action. He concluded that the Selector's exclusive reliance on formal training without investigating and considering relevant on-the-job experience was arbitrary. He noted that the Company's selection guide emphasizes the value of on-the-job training over formal training. He further noted that the Selector's focus on formal training and experience in Construction as opposed to I&M is inconsistent with the fact that employees are routinely moved from I&M to Construction as a result of transfers or reductions in force and are expected to adapt despite lack of formal training or Construction experience.

FULL ARBITRATION

BELLSOUTH TELECOMMUNICATIONS, LLC

-and-

Grievance No. B17-032-3315

COMMUNICATIONS WORKERS
OF AMERICA

SUBJECT

Selection of candidate to fill Facilities Technician vacancy.

ISSUE

Did the Company act arbitrarily when it promoted Michael Huffmaster instead of transferring grievant William Mayhew to fill Vacancy No. 1758964?

CHRONOLOGY

Grievance filed: October 2, 2017
Arbitration hearing: February 20, 2019
Briefs received: April 23, 2019
Decision issued: May 13, 2019

APPEARANCES

For the Company : Steven T. Breaux, Senior Legal Counsel
For the Union: Robert M. Weaver, Attorney

EVIDENCE, ARGUMENT & FINDINGS

Grievant William Mayhew's service date with the Company is March 3, 1997. He began as an Outside Plant Technician (OPT) in the Construction organization in LaGrange, Georgia, placing copper cable. He held that position about a year, then had a various other jobs in Georgia before becoming a Facility Technician (FT) in the Installation and Maintenance organization (I&M) in Columbus, Georgia in 2005, and has held that position ever since.

In October 2017 he applied to transfer to a posted FT vacancy in Construction in Paducah, Kentucky. Fifty other employees bid on it and selection of the successful bidder was handled by Network Staffing Manager Calandra Mba. Analysis of the candidate list with reference to several priority groupings cut it to two qualified candidates: grievant and Michael Huffmaster, an OPT in Construction at Paducah. Mba compared their qualifications relative to four factors described in the Staffing Manager's Non-Management Staffing Guidebook that have been used and been the subject of many previous arbitrations over several decades.

The Guidebook lists and discusses application of the "factors of consideration" as follows:

- **Production Expectancy in the Proposed Job**
- **Knowledge of the Proposed Job**
- **Attendance and Punctuality Expectancy in the Proposed Job**
- **Conduct Behavior Expectancy in the Proposed Job**

The Staffing Manager should gather and consider all reasonably available and relevant information on each candidate with regard to these four factors. When the Staffing Manager can discern, document, and articulate clear differences among candidates based upon his/her assessment of the information gathered, a sound basis for the selection decision is established.

Conversely, when the Staffing Manager cannot discern such clear differences among candidates, he/she should apply the principle of seniority, selecting the most senior qualified candidate. In this context, "qualified" means that the candidate meets the "threshold requirements" of the job as well as the several contractually mandated "time served" criteria (i.e. time in title, etc.) in the current job.

It is important to note that the application of the principle of seniority differs between promotional and non-promotional selections (i.e. laterals and downgrades).

Non-Promotional - When, after consideration of the four factors noted above, the Staffing Manager determines that the best candidate for a non-promotional selection is not the most senior candidate, he/she must demonstrate that the candidate is better qualified than the senior candidate.

Promotional - In order to support a decision to select a candidate other than the most senior qualified candidate for a promotional selection, the Staffing Manager must demonstrate that the candidate selected is substantially better qualified than the senior candidate. Thus, the standard of "better qualified" is higher for promotional selections than for non-promotional ones.

* * *

In both cases the differentiation among candidates must be clear, supported by documentation as appropriate, and it must lend itself to logical expression and explanation by the Staffing Manager.

In cases (promotions) where we must demonstrate a junior candidate is "substantially better qualified" than a senior candidate, the differentiation among the candidates must rise to a higher level: The Staffing manager must be able to show that the difference(s) among the candidates are significant enough to have immediate and substantive impact on job performance.

For grievant, transfer to Paducah would be "lateral," but for Huffmaster it would be a promotion, so the applicable criterion was "substantially better qualified," which has contractual root in Section 12.02C of the parties' agreement, which says "seniority shall govern if other necessary

qualifications of the individuals are substantially equal.” But Mba put an extra gloss on the four-factors analysis: she said *any* differential favoring one of two candidates in two factors made that candidate “*substantially* better qualified,” but she conceded the Staffing Guidebook does not say that, and neither does the agreement. She said she found Huffmaster better qualified in Production Expectancy and Knowledge: the latter because he had “most of the relevant training” for a Construction FT, “all but advanced fiber splicing.” Specifically, she noted he completed forty hours of “basic fiber splicing” training on September 1, 2017, barely a month before the posting, and two years earlier had sixteen hours of “UPD” training, a UPD being a hand-held, tablet-like electronic communication device on which Construction technicians report time and work. As to Production Expectancy, Mba said the difference in Huffmaster’s favor was this:

He worked in the area. He was already in construction and engineering. He understood the practices already of the area. He knew how to read the engineering work order. He knew the plant, the area, the routes, as well as — you know, again, in the rural areas, the facility technicians and the outside plant technicians work side by side. You have one [the OPT] go out and lay the plant [cable] and the other one go out there and splice it.

To buttress Mba’s testimony on the latter point, Company witness Jeff Kee, an Atlanta Area Construction Manager, opined that a Construction OPT from the same area “would be more immediately productive because he’s there, he has knowledge of the plant . . . he’s working there, his familiarity with the crew, and most cases, like I said, with some of my OPTs, they do it [splicing] anyway.” But he and Mba acknowledged that employees often are transferred or promoted to geographical areas where they have not worked before and handle the change without difficulty or significant delay in productivity. They also acknowledged that practical, on-the-job experience and training can be equally as or more valuable than formal training. Kee further acknowledged he had nothing to do with and no knowledge about this case or either candidate’s qualifications, and Mba acknowledged that Huffmaster’s record included no differential pay for working in the higher FT classification.

Grievant testified that he routinely spliced fiber optic cable when doing repairs on the F2 side of the Company network (between remote terminal and customer) and also regularly worked on the F1 side (the Construction department’s usual domain) to assist with splicing air-pressurized, paper-insulated fiber optic cable due to his air pressure experience. He also said that fifteen to twenty times over the past four years he spliced and built casings for multiple-cable transmission

lines in that part of the network. He said he was familiar with and knew how to read and work from Construction engineering drawings, and the Union placed in evidence one such drawing with his name on it. He also said he had worked throughout the State of Georgia in all types of environments and always quickly found his way around and was immediately productive in the new area, especially with GPS mapping and location-finding capabilities. William Newsom, a Construction FT since February 2017 and before that an I&M FT in Atlanta (in the same crew as grievant) for fifteen years, said his experience was similar to grievant's and he immediately began splicing fiber and recording time and work on a UPD after transferring to the Construction organization, with no delay or difficulty. He also said the timekeeping/reporting system used in I&M was more complicated than the UPD system used in Construction.

No one contradicted grievant's testimony about his fiber splicing experience nor did Mba say she knew or tried to learn anything about it, despite the Staffing Guidebook directive that the "Staffing Manager should *gather and consider* all reasonably available and relevant information on each candidate" and its "Comments on Knowledge of Proposed Job":

Job Knowledge consists principally of knowledge acquired as a result of formal training, and knowledge acquired as a result of performing the job.

Presumably, the optimum degree of job knowledge is achieved through a combination of those two factors. Of the two, however, the job performance knowledge should receive greater weight. Normally, a person who has only successfully completed formal training can hardly be said to possess as high a degree of job knowledge as one who has successfully performed in the job, even though the latter may not have received formal training.

Among those sources of information which may be helpful to the Staffing Manager are:

- Records of the candidate
- Examination of training records *and Company experience* [emphasis added]

The factor to be judged is the extent to which the candidate possesses those items of special training or experience, which are required for immediate performance in the job.

The Union argues that Huffmaster's selection without consideration of reasonably available information about grievant's practical job performance knowledge constituted arbitrary action. It says that conclusion is inescapable when one reads the Staffing Guidebook and selection case arbitration decisions, so the grievance should be sustained. The Company of course has a different view, arguing that Huffmaster's selection was reasonable and fully defensible based on the information Mba actually had, so the grievance should be denied.

The requirement that a Company selector in cases such as this gather and consider all reasonably available, relevant information about a senior applicant's job performance knowledge obtained through practical experience has been a foundational aspect of the parties' selection arbitrations going back more than forty-five years.

In *Jones* in 1973, Roger Williams ruled that a "Selector's incomplete investigation into the Grievant's qualifications . . . constituted arbitrary action and justifies the allowing of the grievance." He noted "several prior arbitrators in promotion by-pass cases between these parties have held that insufficient or incomplete investigations constitute 'arbitrary action,'" and for the position in that case "any applicant's prior training and/or experience in sales work should [have been] thoroughly investigated" even if not apparent in records submitted to the Selector.

Five years later, in *Morgan*, arbitrator Raymond Britton ruled that a junior employee's selection for a Communications Consultant job constituted arbitrary action because the Selector "either did not know that the Grievant researched records, analyzed them, initiated contact with the customer, and made sales, or she did not make a proper investigation thereof" and the grievant's "proven record . . . in a directly related job containing some of the very same job duties [was] deserving of more consideration in this matter than was apparently given."

Another six years later, in *Decker et al*, arbitrator Eric Schmertz ruled that "apparently incomplete records in this case plus the failure to interview constituted a failure to meet the mandate that 'the selector should gather and consider all reasonably available and relevant information on the candidate relative to the [four] factors' [and] it is no excuse that many had bid and he was trying to fill the job within 60 days."

Here, Mba was comparing qualifications of only two candidates, having eliminated others in earlier phases of consideration, so it would have been no great burden for her to gather information about grievant's practical experience with fiber splicing; as arbitrator Schmertz commented, however, no "bidders should suffer the consequences of a selector's perception that he *would be* overburdened if he was thorough."

Mba was less than thorough, in that she did not gather or consider reasonably available, relevant information about grievant's practical job performance knowledge related to fiber optic cable splicing, the Construction work environment, his past adaptation when assigned to new geo-

graphical areas, or whether he was likely to be immediately productive with a different electronic device for recording work and time than was used in I&M. As in cited cases from decades ago, selecting the junior candidate without gathering and considering such information was arbitrary action and as such a violation of Article 12, so this grievance also must be sustained, with the remedy specified in Section 12.06 of the agreement.

DECISION

The Company acted arbitrarily when it promoted Michael Huffmaster instead of transferring grievant William Mayhew to fill Vacancy No. 1758964, so Grievance No. B17-032-3315 is sustained and the Company shall promptly take necessary steps to correct such arbitrary action.



Paul Glendon, Arbitrator
May 13, 2019