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IN THE MATTER OF ARBITRATION BETWEEN SOUTHERN EQUIPMENT COMPANY and SHEET METAL  
WORKERS INTERNATIONAL UNION, LOCAL NO. 93

Arbitration Decision

FMCS 93-08185

February 14, 1994

John R. Thornell, Arbitrator

**Andrew J. Martone**

Neal M. Davis

JOHN R. THORNELL, impartial arbitrator, selected through procedures of Federal Mediation and Conciliation Service.

A hearing was held September 17, 1993 in St. Louis, Missouri on a grievance filed by employee Michael Miller, herein referred to as the Grievant.

The Company was represented by **Andrew J. Martone**, attorney. The Union was represented by Neal M. Davis, attorney.

The parties examined witnesses and introduced documentary exhibits in evidence. A reporter's transcript of the record was made consisting of 227 typewritten pages.

The contract calls for a tri-partite Board of Arbitration which the parties waived and agreed that this arbitrator would hear this dispute and issue a final and binding award.

Post-hearing briefs were filed November 29, 1993 at which time the record was closed.

ISSUE

What is the rate of pay for a red-circled employee who bumps down to production work?

FACTS

The Company has for many years been engaged in the manufacture of customized metal kitchen equipment for hotels, restaurants and fast food chains. Its principal place of business is in St. Louis, Missouri where this grievance arose.

In 1983 the Company and the Union in a side agreement negotiated a two-tiered wage scale. This side agreement was an addendum to their 1983 collective bargaining contract and is referred to herein as the addendum or red-circle

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contract.

The addendum maintained the wage rate for employees hired prior to June 1, 1983 (red-circled employees), but permitted a lower rate for employees hired thereafter.

In the late 1980's the customer base for the Company's products began a downward trend due to an overbuilt hotel industry, the demand for lower cost equipment and the demise of many traditional purchasers of custom-made kitchen equipment. As a result the Company was forced to change its manufacturing philosophy, and to shift away from producing one of a kind, one at a time, equipment. The Company shifted to making more standardized modular commercial food service equipment.

This change in the way the Company manufactured a portion of its products, from custom fabrication to production work (repetitive manufacture of standardized products), necessitated a change in wage structure because production products sell to a different market at lower prices than custom products.

To accommodate this partial change in the Company's operations the Company and the Union negotiated what is referred to as an interim agreement in January, 1992. It established a new work classification of production worker separate and apart from the custom work group with lower wage rates from \$5.96 to \$9.25 per hour as opposed to the much higher custom rates ranging to a top rate of more than \$14.00 per hour.

The interim agreement also provided that in event custom employees (journeymen, mechanics, welders, assemblers and operators) were placed on layoff they could bump down into the production class at the production rate. If custom employees do not wish to bump down to the production rate the interim agreement gives them the option to take layoff and draw unemployment benefits.

The current contract sets forth the separate wage rates to be paid for custom manufacturing operations and for employees performing production work. It states that employees moving from custom work to production work will receive the production wage rate 25 working days after they begin performing production work. The red-circle rates are also set out in the current contract.

The dispute arose over the pay rate for Grievant Michael Miller who was hired in March, 1983. He was a red-circled refrigeration man who did custom work. In September, 1992, the Company advised Grievant that he was scheduled for layoff, and in lieu thereof he could, in accordance with the contract, bump down to a production job at a rate some five dollars per hour less than his red-circle rate.

Grievant took the production job and filed a grievance alleging that he is a red-circled employee and as such should receive the red-circle rate while doing production work.

Failing to settle the dispute the parties proceeded to this arbitration.

#### SUMMARIZED POSITIONS OF THE PARTIES

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## THE UNION

The Union contends that the red-circle contract created an unalterable, non-negotiable lifetime wage guarantee for red-circled employees for as long as the Company has contracts with the Union.

The Union argues that the red-circle addendum specifically provides that a red-circled employee who bumps to any job will be paid not less than the red-circle rate, hence Grievant should be paid the red circle rate while performing production work.

The Union further contends that the establishment of a new production classification did not supersede or void red-circle addendum which states that in the event of conflict between it and any collective bargaining agreement the addendum will control.

The Union asks that Grievant be paid his red-circled assembler's rate and be made whole.

## THE COMPANY

The Company contends that the language of the current contract is clear that all production work will be compensated at production rates and this applies to all employees bumping down to production, including red-circled employees.

The Company further contends that the red-circle contract was nullified during negotiations for the current contract in that it was not incorporated into that agreement.

The Company argues that it correctly paid Grievant the production wage rate as per the contract and the grievance should be denied.

## OPINION, FINDINGS AND CONCLUSIONS

The Union's case rests on the red-circle contract, negotiated in 1983, and on the contention that it created a lifetime unalterable wage guarantee for all work performed by red-circled employees, and that such guarantee automatically carries forward without change into subsequent contracts. Such claim overlooks the fact that the addendum was negotiated within the context of, and pertained only to, the custom work that the Company was engaged in at that time. The classifications contained in the red-circle contract were and are custom work classifications and the red-circle rates apply to employees doing work within those classifications.

In late 1991 and early 1992 there was a major change in the Company's operations. Because of such change the Company and the Union negotiated the interim agreement which established the production class work group to perform standardized production work at a lower rate. The evidence is uncontroverted that the market for production products will not support custom rates. The language of the current contract is clear and explicit that custom employees bumping down to production jobs will be paid the production rate after 25 working days. It is not

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my prerogative to change or disregard such precise language. There is nothing therein that exempts red-circled employees from its import.

The Union points to language in the addendum which it claims makes the rates therein non-negotiable and guaranteed for as long as the Company employs red-circled employees in the unit. I am not persuaded. The Company and the Union are not barred from altering or modifying rates they have previously negotiated. Employees in the unit are third party beneficiaries. Their rates may be changed by Union-Company negotiations, subject to ratification. Due to a change in Company operations the Company and the Union negotiated a lower rate for production work in the interim agreement. I find it clear from the language of the interim agreement, and the current contract, that customworkers, which encompasses red-circled classifications, shall receive the production rate (after 25 working days) when performing production work.

The red-circle rates and classifications of the addendum survived the 1992 negotiations and appear in the current contract. They are, however, only applicable and pertain to custom work and not to production work.

I conclude that the production rate of pay is the correct rate for red-circled employees who bump down to production work. I further conclude that the Company has properly paid Grievant and the grievance should be denied.

AWARD

The grievance is denied.

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END OF DOCUMENT