IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNITED STEELWORKERS, LOCAL 5890

UNION

AND

EVRAZ REGINA STEEL
(A Division of Evraz Inc NA)

COMPANY

AWARD

Arbitrator	Kenneth A. Stevenson, Q.C.
Held in Regina:	May 20, 2009
For the Union	Sonny Rioux
For the Company	Larry LeBlanc, Q.C.
Award Date:	July 31, 2009

AWARD

I. INTRODUCTION

1. The parties agree that I have been properly appointed as a single arbitrator with jurisdiction to hear and determine the issues raised by two Union grievances brought before me by consent. These grievances are dated May 25 and June 13, 2008. The May 25 grievance was filed by the Union after the Company posted notice of its intended work schedule for Spiral Mill employees on May 23, 2008 for the shifts scheduled for May 27, 28, 29 and 30, 2008 (the "May 23 memorandum"). The June 13 grievance was filed following the Company's implementation of the schedule announced in the May 23 memorandum.

The material part of the May 25 grievance is the following:

> **Nature of Grievance:** Company is not following Article 12.13 which states – If an employee(s) is required to work, the most senior qualified person(s) on that particular crew will remain, employees on list of layoff are senior to majority of employees on crew schedule.

The material part of the June 13 grievance reads as follows:

> **Nature of Grievance:** On the week of May 26 to May 30 the Company invoked the 3 day layoff clause on the Mills, laying off senior men while junior men worked on the Finishing Line. Article 12.13(A) states that "If an employee(s) is required to work the most senior qualified person(s) on that particular crew will remain.

2. Each of the grievances alleges violation of Articles 12.02(a)1 and 12.13(a) as well as any other applicable article, act, or legislation. The settlement requested in the May 25 grievance is *"Junior employees should be laid off, not senior employees"*. The settlement requested in the June 13 grievance is *"Senior employees laid off to be made whole for the day they were laid off"*.

3. The parties have agreed that in the event the grievance(s) is allowed, that I reserve my jurisdiction to permit the Union and the Company an opportunity to resolve the issue of any applicable remedy.

II. FACTS AND ISSUES

4. These grievances relate to the operation of the Spiral Mill facility at the Regina plant. The Spiral Mill facility produces tubular pipe in typically 80 to 82 foot lengths with diameters between 30 to 60 inches. Spiral pipe is formed from coiled steel processed in each of four (4) spiral welding mills. The pipe then enters a common flow through the plant for completion. The various stations include the pipe cleaner, inspection stations, hydro testing, beveller, further inspections including a sonic inspection and a final third party inspection before passing through the scale for final length and weighing. If a pipe defect is revealed during the process and inspection, the pipe is subjected to further processing which may include a cut off of the defect. Pipes which have been cut may be welded into complete pipes in the double-jointing section.

5. Prior to issuing the May 23 memorandum, the Company was experiencing excessively high levels of welded pipe which needed to be finished by the Finishing Line. In light of the back-log and the effects on the Company's ability to store the welded pipe, the Company decided to slow down welding in the mills in order to permit the Finishing Line to catch up with mill production.

6. In this background the Company decided to reduce mill production. Up to this time, the Spiral Mill was operating on a 24-7 basis with 12-hour shifts. The Company decided that it would close two of its four welding mills for each of the dates between May 27 and 30, 2008. To accomplish this, the Company gave notice to two welding mill crews on each shift during these days that they would not be working on one of the subject dates. This meant that on each of these dates, on both the day shift and night shift, only two of the four welding mills were operating. As a result of the implementation of this slow down in production, based on the schedules of the affected employees, each employee was absent for one 12-hour shift during this four-day period

7. The employees affected by the May 23 memorandum who did not work one of their scheduled shifts on the four days in question, were the employees who worked on the welding line in each of the four spiral mills. Those employees who were assigned to the

double jointing area or worked on the Finish Line were unaffected by the scheduling memorandum; these employees worked normal shifts without interruption during the four days. Trevor Silzer, a General Foreman of the Spiral Welding area acknowledges that junior employees worked while senior mill employees were told to remain at home on an otherwise scheduled shift.

8. When the Company issued the May 23 memorandum to the Spiral Mill employees, it referenced *"Article 12.13(a) lay off Because of Breakdown (3 Day Clause)"*. When the memorandum was issued, there was no "breakdown". However, on May 27 at approximately 4:45 p.m., a fire occurred in Spiral Mill R2 which resulted in that mill being shut down for a number of days. The groups of employees asked to stay at home remained as set out in the May 23 memorandum, but the mill in which these employees worked after the fire was changed.

9. At the time of the May 23 memorandum the Spiral Mill was operating with four crews identified as Teams A, B, C and D (page 103 of Collective Agreement). The members of each Team have the same day/night shift schedule over a four-week period. According to Trevor Silzer, each spiral welding mill crew consisted of four employees (two mill operators, uncoiler operator and sonic operator). Each mill operator should be interchangeable from one mill to the other mills.

10. The effect of the May 23 memorandum was to have mill employees on Team A who would have been assigned to work in mills R1 and R2, not to be at work (or to stay at home from work) for their day shift on May 27; Team B employees did not work in these mills on the evening shift. Team C and D employees from mills R1 and R2 were not required on May 28. Team C and D employees who would have worked in mills R3 and R4 were not required on May 29. Team A and B employees in mills R3 and R4 were not required to work May 30.

11. The notices to the employees that an employee was not required to work, only affected employees who would have been scheduled to work in one of the four spiral welding mills in the positions of mill operator, uncoiler operator or sonic operator. The members of

Teams A, B, C and D who were assigned to work in Finishing were unaffected by the May 23 notice and worked their normal scheduled shifts during this four day period. The intent was to clear up the backlog of pipe and reduce inventory. The Company acknowledges that some of the retained employees were junior to mill employees who did not attend work on one of the four days. Mr. Silzer's evidence is that as a result of the spiral mills recent expansion and changed equipment in the Finishing Line area, that for a mill employee to perform work in Finishing, the employee would require one or more days to be trained. Mr. Silzer acknowledges that some mill employees have Finishing Line experience and that some of these jobs are entry level ones; however, it is his evidence that a mill employee would require familiarization with safety procedures and job tasks.

12. Mr. Silzer acknowledges that although the May 23 memorandum refers to Article 12.13(a), the Mill was not broken down that day. The memorandum covers a four-day period during which the affected employees were told they were not required to be at work. He says no employee was off work for more than three days; each employee was only off work for one scheduled day.

13. The words *"if an employee(s) is required to work, the most senior qualified person(s) on that particular crew will remain"* were added to the collective agreement between these parties covering the period 1997 to 2002. The provision has been included in each successive collective agreement.

14. The following issues must be determined:

(a) Was Article 12.13 of the Collective Agreement intended to cover circumstances such as set forth in the May 23 Memorandum?

(b) If yes, did the Company violate 12.13 with its actual and proposed scheduling of employees during the May 27 to 30 period?

(c) What is the meaning of "that particular crew" in the circumstances of this grievance?

(d) What is the meaning of "qualified" in the circumstances of this grievance?

III. RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

14. In the grievances, the Union raises the following provisions:

> **Article 12.02 – Seniority and Job Opportunity**
>
> (a) 1. Production and Maintenance Employees Only
>
> The parties recognize that job opportunity and security shall increase in proportion to length of service. It is therefore agreed that (subject to Article 12.01) senior employees shall be entitled to preference in all cases of job posting, transfer, lay-off, vacations, and rehiring after lay-off. ...
>
> Article 12.13
>
> (a) Lay-off Because of Breakdown
>
> When a breakdown of equipment or a lack of material or work occurs and an employee is sent home as a result thereof, such employee may be sent home without regard to seniority, provided that such total time lost by any such employee shall not exceed three (3) working days in any one calendar month. If an employee(s) is required to work, the most senior qualified person(s) on that particular crew will remain.

In the course of the hearing, I was also referred to the following provisions of the Collective Agreement:

> Article 12.08
>
> (a) Production and Maintenance Employees Only
>
> Notices of job vacancies shall be posted for either seven (7) calendar days or fourteen (14) calendar days depending on the nature of the vacancy to be filled. Vacancies due to the manning of additional crews shall be posted for seven (7) calendar days. All other vacancies shall be posted for fourteen (14) calendar days. All vacancies will be posted on a special bulletin board supplied for Union purposes with a copy submitted to the Union. Permanent vacancies shall be bid when they occur on the bottom job in a line of progression or on a job that is not in a line of progression.
>
> A permanent vacancy shall be any vacancy exceeding thirty (30) days, including new jobs established of thirty (30) days duration or more:
>
> Exceptions to this shall be:
> 1. Vacations
> 2. Sickness
> 3. Long Term Disability
> 4. Workers' Compensation

5. Approved Leave of Absence

An employee desiring the position must make application to management (with a copy to the Union), within the above seven (7) or fourteen (14) calendar days. The senior employee applying for the position shall be given preference to the appointment.

Article 12.10 – Lines of Progression and Restrictions

(n) Rules for Bumping – Displaced Employees Only

4. Definition of Cutback

Cutback in this article shall mean a reduction in the number of crews and does not mean a temporary shut down where upon recall, the same number of crews are re-instituted.

Article 12.11 – Definition of Lay-off

For the purpose of this Agreement "lay-off" means temporary dispensation with the services of an employee for a period exceeding three (3) working days in any one (1) calendar month.

Article 12.12 – Lay-Off Procedure

Whenever a lay-off occurs, due to lack of work and subject to the provision of Article 12.02, the Company agrees to give fourteen (14) calendar days notice, except as noted in 12.12(a), such notice to be posted on plant bulletin boards with a copy to the Union. A letter of confirmation will also be given to the employee or mailed to his last known address.

(a) Exceptions to the fourteen (14) day calendar notice will be:

1. Temporary or probationary employees are subject to layoff without notice.
2. Seven (7) calendar days notice of layoff will be given to Employees with less than five years seniority
3. Employees who are recalled for a shorter period of time than their layoff notice entitlement.
4. Seven (7) calendar days notice of layoff will be given when a layoff is occasioned by emergency conditions. In such cases the notice period may include days where an employee is sent home in accordance with Article 12.13.

15. In making my decision I have had regard to each of the foregoing sections as well as all other provisions of the collective agreement.

IV. POSITIONS OF THE PARTIES

Position of the Union

16. The Union's position is that Article 12.13 contemplates unexpected events which occur during working hours which require employees to be either "sent home" or to remain at home. It says that 12.13 is not intended to apply to circumstances such as set forth in the May 23 memorandum which changed scheduling patterns during a four-day period. The Union submits that 12.13 is intended to provide for a shut-down for only a three-day period; the circumstances here covered a four-day period and the same was not properly instituted. It says that the Company wrongfully scheduled junior employees to work in an attempt to turn a four-day shut down into a three-day shut down.

17. The Union asserts that the Company's action has truncated and violated the seniority rights of affected employees. Mr. Rioux directs the Board to the fact that seniority is one of the most important and far-reaching benefits which the union movement has been able to secure for its members. As such, employee seniority should only be affected by very clear language in the collective agreement. Arbitrators should construe the collective agreement with strictness where it is contended employee seniority has been forfeited, truncated or abridged by the collective agreement. See *Tung-Sol of Canada Ltd. v. United Electrical, Radio and Machine Workers of America, Local 512,* [1964] 15 L.A.C. 161 (Reville). Mr. Rioux submits that Articles 12.02 and 12.13 are each provisions which are designed to protect seniority rights in the event of a lay-off or reduction of work.

18. The Union submits that the "crew" or "Team" working on any shift in the Mill are considered to be the same. A Team member would include not only the operators working in the spiral welding mill but all employees on the spiral pipe production line through to and including x-ray and finishing line. Mr. Rioux says that one Team or crew comes to work on the same shift for the purpose of working together to run the Mill. He submits that a crew does not consist only of those employees working in the spiral mill as operators, uncoilers or sonic operator.

19. The Union claims that the May 23 memorandum really resulted in a four-day lay-off in that four production days were affected. The fact that the Company retained junior employees at work while senior employees in the spiral mill were told not to come to work violates 12.13 which requires that senior qualified mill operators be retained in the production line. It is the Union's position that the senior people have negotiated the right and opportunity to work in circumstances covered by 12.13. The Union says that the Company is now trying to take back what it gave up in negotiations.

Position of the Company

20. The Company says that the grievances relate to the shut down of two of the four spiral mills due to the backlog in the Finishing Line and a lack of storage. There was a lack of available work for employees working on the welding line; such lack of work fulfills one of the conditions of 12.13. The Company says that in making its decision in the exercise of its management's rights, it was entitled to organize the schedule as it did such that no mill employee lost more than one shift during the four days. Mr. LeBlanc says that the Union's complaint is that junior employees were working on the Finishing Line while senior employees were told not to work. He points out that the Union has not complained or grieved the equal reduction of work for the spiral mill employees by the loss of one shift in the four-day period. The Company's position is that 12.13 contemplates both being sent home and being told to stay at home.

21. The Company's position is that the May 23 memorandum provides a correct interpretation and application of 12.13(a). The Company made appropriate plans for the short interruption of work. Article 12.13 permits it to act as it did in these circumstances because there was no lay off (described in the Agreement as absence for in excess of three working days). In such circumstances the Company's ability to schedule employees is not restricted by seniority. The Company chose a schedule on which each spiral welding employee was scheduled to stay home for one day.

22. The Company submits that the words "that particular crew" mean the specific crew working on the welding line in the Spiral Mill consisting of four employees, namely, two

mill operators, an uncoiler operator and a sonic operator. Alternatively, the Company says that if "that particular crew" is not restricted to the four specific employees on the particular mill it should be interpreted as covering all of the employees working in the four mills on any shift. The Company argues that the spiral welding employees are not part of the 'crew' that mans the Finishing Line. Further, the Company submits that in any event the affected employees are not "qualified" to perform the required work as they would need a one or two-day familiarization period to work on the Finishing Line.

23. In support of its interpretation of the meaning of "crew", the Company points out that there is no definition of crew in the Collective Agreement. The Company refers to the provisions of Article 12.08(a) dealing with the manning of additional crews (adding more of the same) and 12.10(n)4 dealing with the reduction of the number of crews. The Company asserts that these provisions support its interpretation and application of "crew" in 12.13.

24. The Company further submits that as a result of the fire which occurred in the Spiral Mill R2, it was out of service for four days. The Company says that this is an example of how 12.13 would apply where there would be "no work". The Company says that as a result of the fire, it was within its rights in 12.13 to send the four employees who manned the R2 Mill home without regard to seniority or as it did, to reassign these employees to another mill.

25. The Company argues that in the context of the application of 12.13 in the fire situation, "that particular crew" could mean any of the four mill operating crews. It says Team A would consist of four spiral mill operating crews working on the shift, plus a fifth crew on the Finishing Line. The Company says that the designation of Teams A, B, C and D has to do with the designation of off-setting schedules. Teams A and B off-set each other in the schedule as do Teams C and D. Alternatively, the Company says that notwithstanding the May 23 memorandum, it is not necessary for the Company to resort to the application of Article 12.13.

26. The Company says that Article 12.11 defines a 'lay-off' as being when an employee is laid off for a period exceeding three working days in one calendar month. A lay-off is individualized to each employee. Therefore, the Company submits that the lay-off procedure and seniority rights do not apply to circumstances where an employee is off work for less than four working days. The Company says there was no lay-off, such as is dealt with in Article 12.12 where bumping and other rights would apply.

27. The Company claims that what it did pursuant to the May 23 memorandum was an exercise of its residual management rights. The rights including the right to schedule as it did and to tell individual employees that they were "not required" on the dates due to production requirements. Where the employee is not off work for greater than three working days in one month, there is no lay off. In this regard, I am referred to the decision of the Supreme Court of Canada in *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92,* [2004] 1 S.C.R. 609 wherein speaking for the majority, Major, J. said at paragraph 32:

> 32. Generally management has a residual right to do as it sees fit in the conduct of its business. This right is subject to any express term of a collective agreement or human rights and other employment-related statutes providing otherwise: see *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324,* [2003] 2 S.C.R. 157, 2003 SCC 42 at para 28. Here, art. 701 affirms the respondent's broad right to hire and select workers. However, this recognition is [page 623] prefaced by the clause "Subject only to the terms of this Agreement".

28. The Company submits that 12.13 was correctly applied provided however that even if it was not available to the Company or if incorrectly applied, there was still no "lay-off" as each employee only missed one work day and the Company has no restrictions on its management rights to structure the work in the manner in which it did. The May 23 memorandum did cover four calendar days. On the individual employee's shift schedule each spiral welding employee would only (in the absence of the May 23 memorandum) have worked two of such four days; each employee only lost one day as a result of the implementation of the memorandum. Accordingly, the scheduling affected less than three working days.

V. ANALYSIS AND DECISION

29. The May 25 and June 13, 2008 grievances object to the manner in which the Company proposed to, and then did, schedule the work force in the Spiral Mill on May 27 to 30, 2008. The Union does not dispute that on these dates there was a lack of work in the spiral welding mills such that the Company could properly rely on Article 12.13(a). The parties agree that the grievances must be determined, and my decision made, based on my determination of whether or not the Company's scheduling of its employees on these dates violated 12.13(a).

30. For the reasons that follow, I conclude that Article 12.13 was applicable in the circumstances, and that the Company did not violate this provision in its scheduling from May 27 – 30.

A. Was Article 12.13 intended to cover circumstances such as set forth in the May 23 Memorandum?

31. The Company acknowledges that during the dates in question there were employees working on the Finishing Line whose seniority was less than that of the spiral welding mill employees who were not at work. This was as a result of the Company having advised these employees that they were not required to be at work for a shift. Such advice was given pursuant to 12.13(a). The Company says that its scheduling was completed in accordance with 12.13(a) and did not violate the Collective Agreement. Although it is not the main thrust of the Company's position, it also asserts that the spiral welding employees who were told to remain at home, were not "qualified" to perform the required work as a result of these employees requiring at least one or two days of familiarization having to do with occupational health and safety and other matters prior to being "qualified" to work on the Finishing Line. However, no detailed evidence of the qualifications required was presented by the Company in this regard.

32. Both parties acknowledge and agree that notwithstanding there was no "breakdown of equipment" on May 23 when the Company issued its memorandum, nevertheless, as a result

of lack of work available in the spiral welding mill, the Company was entitled to rely on 12.13(a) when it scheduled the employees. The parties agree that 12.13(a) applies more broadly than may appear on a strict reading. While 12.13(a) refers to an employee being "sent home", it is common ground between the parties that this provision also covers a situation where employees are advised to "remain at home" and not come to work on what might otherwise be a regularly scheduled shift. It is this latter situation which is relevant in this matter as employees were not "sent home" during a shift but were given advance notice of scheduling to address the lack of work available during the May 27 to 30 period.

33. I am of the opinion that the Company was entitled to rely on 12.13(a) to schedule a reduced work force during the four-day period. Nothing in 12.13(a) restricts its use and application to only a three-day period. Its terms restrict or limit its use such that as a result of its use or application, an affected employee shall not lose more than three working days in any calendar month. Here each affected employee lost only one working day. In its application to a loss of three working days, it would cover a loss of work which was not a "lay off" of the affected employees. A "lay-off" for an employee requires a temporary disposition of services for a period exceeding three working days in one calendar month (Article 12.11). In a lay-off situation, the parties have provided an agreed procedure to be followed (Article 12.12). Senior employees shall be entitled to preference [Article 12.02(a)(i)] and all of the rights which a laid-off employee may have under the Collective Agreement to exercise bumping and other seniority rights.

34. Article 12.13(a) provides an effective method for the parties to address a short-term interruption of employee service arising due to "...breakdown of equipment or lack of material or work...". It covers situations that could give rise to temporary interference with normal production or operations that may not have been able to be foreseen, predicted or planned for. In such circumstances, the "lay-off" provision of the Collective Agreement would not be triggered. The concept of seniority, whereby qualified senior employees are granted rights to remain at work, was introduced in the collective agreement covering 1997 to 2002 when the sentence reading *"if an employee(s) is required to work, the most senior qualified person(s) on that particular crew will remain"* was added to 12.13(a).

B. Did the Company violate Article 12.13 with its scheduling during the May 27 – 30 period?

35. Having regard to the seniority rights protected by 12.13(a), it is necessary for me to determine whether or not the Company's proposed and actual scheduling of the employees during the May 27 to 30 period, violated the rights of any employees who were told to remain at home. The Company acknowledges that junior employees worked in double jointing and on the finishing line while more senior employees from the spiral welding mills remained at home for one shift.

36. In order for me to reach a conclusion as to whether the Company's actions violated 12.13(a), I must determine whether or not the "senior persons" who were told to stay home were both "qualified" and members of "that particular crew". I will address the latter issue first.

C. What is the meaning of "that particular crew" in the circumstances of this grievance?

37. The Spiral Mill is a large facility in which tubular pipe of approximately 80 feet in length and of 30 to 60 inch diameter is manufactured from coiled steel. The coiled steel is processed in four spiral welding mills before it enters the common flow for completion on the Finishing Line. The double jointing area is responsible for cutting out defective pipe and joining it into an acceptable pipe. Prior to the grievances, on a normal shift during full production, the work complement in each spiral welding mill would include two mill operators, an uncoiler operator, and a sonic operator. These employees were the ones affected by the May 23 memorandum.

38. The Collective Agreement does not provide a definition of "crew". The Company refers me to the provisions of Article 12.08 and 12.09(n)(4) where "crew" is used in the context of notice required in relation to the manning of additional crews and in defining a

cutback (a reduction in the number of crews). I was also referred to page 103 of the Collective Agreement where the schedule of the affected employees was reproduced. Schedule B-17 is headed "4 Crews - 12 HR – 7 Day Coverage – Days & Nights – 2/3/2".

39. The parties disagree as to the meaning and application of "crew" as used in 12.13(a). The Company says that in this context and in this circumstance "crew" means and should be applied as covering the employees on any Team who are assigned to work in each of the four spiral welding mills. Such crew consisting of two mill operators, an uncoiler operator and a sonic operator. On this basis the Company says that these four crews were affected by the lack of work and subject to 12.13(a). Alternatively, the Company says "crew" means all of the employees on any Team who are assigned to work on the four spiral welding mills. The Union says that in the context of a temporary reduction of manpower all of the employees on a Team who work in the Spiral Mill should be considered to be a "crew".

40. When the parties agreed to add the last sentence to 12.13(a) in the 1997-2002 collective agreement, the apparent purpose of the words used was to provide some seniority rights. These rights were not those of general seniority which would apply in the event of an employee lay-off, as that circumstance was already contemplated in the layoff provision (Article 12.12). Instead, the seniority rights granted were to "the most senior qualified" person "on that particular crew" where an employee was required to work during the period to which 12.13 applied.

41. The language of 12.13(a) appears to have been negotiated to and intended to cover short-term unforeseen disruptions of production occurring as a result of either breakdown, lack of material or work. The language provides that an employee may be "sent home". By reason of the inclusion of a maximum three-day restriction in the context of the Company's operations, it is both fair and reasonable that the parties are in agreement that the language should also cover an employee who, rather than being "sent home" is told to "remain at home". When the provision was amended in the 1997 collective agreement, no clarity was provided with respect to the meaning or application of "that particular crew". These words would be most applicable to a situation where employees were being "sent home" in the

midst of a shift as a result of breakdown or other circumstances giving rise to the application of 12.13(a). However, I must both interpret and apply the language of 12.13(a) and determine the meaning of "that particular crew" in the context of the factual background of these grievances wherein employees were not "sent home" but advised to "remain at home".

42. In the context of this Collective Agreement, having regard to the addition of the last sentence of Article 12.13, I am required to interpret this language to determine the mutual intention of the parties. In doing so, I must give effect to the words and phrases of the Agreement in the context of all of its provisions. Such meaning should be purposive and give effect to any plain or unambiguous language chosen by the parties. In ascertaining the meaning which the parties intended, I should seek to determine the likely reasonable intentions and expectation of the parties. I must have due regard to the fact that the subject provision is the result of an amendment to add a requirement that the Company's decision under 12.13(a) is subject to the added seniority rights.

43. In the exercise of its management functions to manage the affairs of and direct the workforce, the Company concluded that in the period of May 27 to 30, 2008 the Company had no work available for employees working on two of the four spiral welding mills. As part of the decision, it also concluded that there was no lack of work for the Spiral Mill employees working on the Finishing Line. The Union takes no issue with this decision.

44. As I have already concluded, the disruption of the work force, necessitated by the lack of work in the spiral welding mills, was of short duration and subject to 12.13(a). Although there was limited evidence concerning the manner in which these employees were assigned duties in the Spiral Mill, it is my understanding of the evidence provided that in usual operations, including those on the days preceding May 27, 2008, the employees, on a Team, were regularly assigned duties in either the spiral welding mill, or in double jointing, or the finishing line. There was no evidence that it was the practice to assign employees from spiral welding mill to double jointing or finishing line or from double jointing or the finishing line to the spiral welding mill. It is my understanding that employees working in the spiral welding mill could be, and were, assigned to work in any of the four spiral welding

mills, although such employees were usually assigned to the same mill to work with the same employees. I note on Exhibit 7 (a schedule for spiral welding employees covering the relevant period), that there is some cross-over of Team members from being assigned to a specific mill.

45. Having regard to the manner in which the Spiral Mill employees were regularly assigned duties within the spiral welding mills, double jointing or finishing line, and the fact that the lack of work was only applicable to the spiral welding mill, I conclude that in these circumstances "that particular crew" was intended by the parties to apply to those Team members who, on the days in question, but for the lack of work, would have worked in the spiral welding mill.

46. In reaching this conclusion I have had regard to prior assignments, during which it appears that spiral welding mill employees were treated as a crew while the finishing line employees were considered to be a separate crew although each employee was a member of the same Team. I have had due regard to the caution of Arbitrator Reville in the *Tung-Sol* decision (supra) and Mr. Rioux's submissions regarding the importance of seniority and the need to give full effect to seniority rights. My conclusion recognizes that prior to the 1995 collective agreement, seniority was not recognized and there were no seniority rights applied in the application of 12.13. Article 12.13 now provides for limited seniority rights for the senior employee on that particular crew in respect of which the provision is being applied. A determination of who the parties intended would be the crew must be made in the context of this provision which addresses a reduction in the work force for relatively short periods of time in circumstances which may be of an emergency nature or involve lack of work or lack of materials. In such circumstances, it is unlikely there will be a significant opportunity to plan for the interruption of services or the re-assignment of personnel.

47. I have also considered how the parties have used the word "crew" in Articles 12.08 and 12(10)(n)(4). Article 12.08 provides for the posting of vacancies due to the manning of additional crews. When I consider how this provision could apply to the Spiral Mill, it appears that it is more probable that the manning of a "crew" is likely to have been intended

to relate to a smaller segment of the employees, such as the spiral welding mill than to the manning of a complete Team. This interpretation is strengthened by the use of the modifier "that particular" in connection with "crew". For example, it could be that while operating the Spiral Mill with less than four of the spiral welding mills, the Company could decide that it needs to operate the remaining mills. In such circumstances, it might seek to add a complement of employees to operate the other spiral welding mill(s) without adding to the number of Finish Line employees. Based on the Union's submission as to the meaning of "crew", then under 12.08 a crew would include employees in all of the positions within the Spiral Mill including spiral welding, double jointing and finishing line. The comments I have made in relation to a determination of what may be a "crew" within 12.08 or 12.10 are not intended to make a determination of such meaning, but only to comment on a manner in which it appears the language could be applied. The use of the word "crew" in one provision of the Collective Agreement does not make a determination of its meaning in another provision which may have a different purpose or intent.

D. What is the definition of "qualified" in the circumstances of this particular grievance?

48. The Company as an alternative argument submitted there was no evidence that more senior spiral mill welders were "qualified" to work on the Finishing Line on the dates in question. In light of the conclusion which I have reached, it is not necessary for me to make a determination as to whether or not such employees were in fact "qualified" to perform the work of the junior employees who remained at work. Furthermore, there was no detailed evidence presented by the Company as to what qualifications were required in this circumstance.

49. For these reasons, I conclude that the manner in which the Company scheduled the spiral mill employees on the dates in question did not violate 12.13 in the manner alleged by the Union. The Union's allegation is that the Company retained junior employees working on the finishing line while more senior welding and mill employees were laid off. I have

concluded that in these circumstances the Company's action did not violate the Collective Agreement.

50. As noted by Mr. LeBlanc in his concluding submissions, there was no grievance objecting to the retention of specific weld mill employees while others were told to "remain at home" during the dates in question or subsequent to the May 27 fire. Accordingly, it is not necessary for me to make any findings in this regard.

51. For the foregoing reasons, the grievances are dismissed.

DATED at Saskatoon, in the Province of Saskatchewan this 31st day of July, 2009.

Kenneth A. Stevenson, Q.C.,
Arbitrator.