

THE LABOR RELATIONS CONNECTION, INC.

In the Matter of the Arbitration Between
UNITE HERE, LOCAL 26,
Union,

**OPINION
AND
AWARD**

-and-

LRC Case No. 660-23

BOSTON PARK PLAZA,
Employer.
Re: Banquet Long End Server

Before: Timothy S. Taylor, Esq., Arbitrator
Appearances:

For the Union:

Pyle Rome Ehrenberg, PC
James Hykel, Esq.

For the Employer:

Ballard Rosenberg Golper & Savitt LLP
Matthew T. Wakefield, Esq.

PRELIMINARY STATEMENT

Unite Here!, Local 26 (“Union”), and Boston Park Plaza (“Employer,” or “Hotel”) are parties to a Collective Bargaining Agreement (“CBA” or “Agreement”) (Joint Exhibit 1)¹ covering March 1, 2018, to August 31, 2022. On August 9, 2023, the Union filed grievances on behalf of [REDACTED] [REDACTED] (“[REDACTED] [REDACTED] [REDACTED] (“[REDACTED] [REDACTED] [REDACTED] (“[REDACTED] and [REDACTED] [REDACTED] (“[REDACTED] alleging the Employer violated the promotion policy and Article 15 of the Agreement when it selected [REDACTED] [REDACTED] [REDACTED] (“[REDACTED] [REDACTED] for the Long-End Server position.

Under the Labor Relations Connections’ rules, the parties selected Arbitrator Timothy S. Taylor, Esq., to decide the dispute. A hearing was held on February 1, 2024. The parties had a full and fair opportunity to present testimony, submit documentary evidence, call and cross-examine

¹ Joint exhibits are referenced as J. __, Union exhibits are referenced as U. __, and Employer exhibits are referenced as E. __.

witnesses, and argue to support their respective positions. The parties submitted briefs on March 20, 2024, and as of that date, the hearing was closed.

ISSUES

Did [REDACTED] [REDACTED] promotion violate Article 15 of the CBA? If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

Article 15 Job Openings

The parties agree that promotions from within the bargaining unit are preferable to hiring from outside the bargaining unit, recognizing that special skills may require external hiring in certain positions. The Employer will take reasonable steps to aggressively encourage internal promotion applications. The Employer will upon request confer with the Union regarding possible steps to increase internal promotions. If an employee is certified through a mutually established Training Program they shall be deemed qualified for that classification.

Bargaining unit job openings shall be posted for at least five (5) days in locations reasonably accessible to all employees. Such postings shall include the job classification(s), contractual rate(s) of pay, and schedule(s) of hours and days to be filled.

Employees may submit written requests for such promotional opportunities within the posting period subject to the need for external hiring specified in paragraph one. The Employer will give consideration to such bids, and the senior qualified employee will be given the opening unless a junior employee is more qualified. The Employer may also determine not to fill the job.

If a bargaining unit member is denied a job transfer or promotion, upon his or her request, the Employer will meet with the employee to discuss the reasons for the selection decision in preparing the employee for future opportunities.

An employee transferred or promoted to another job classification and/or department in or out of the bargaining unit shall be given a trial period of up to thirty (30) days. The employee's hotel seniority rights shall not be jeopardized by failing such a trial period. There will be no bumping under this clause. Employees successfully bidding and retained on a new job in the bargaining unit may not bid for another job until after he/she has been on the new job for at least six months, unless the Union and hotel agree otherwise in special cases.

The Employer may take such steps as are necessary to fill a job during the posting and hiring procedure above.

* * *

Article 19 Management Rights

The Management of the Hotel and the direction of the working force are vested solely and exclusively in the Employer and shall not in any way be abridged except as set forth in this agreement.

The Union recognizes that subject only to the express conditions of the agreement the Employer has the right to hire, promote, transfer, layoff, discharge or discipline employees for just cause, assign work, and schedule hours, classify employees, curtail any activity or cease any operation, make and enforce the observance of reasonable Company rules and regulations after notice to the Union and maintain the efficiency of employees.

The determination of the type of service or products it will provide, the number of meals it will serve in its food outlets, the assignment of overtime, quality standards, hours of work, starting and quitting times and methods and procedures of operations to be used are the exclusive rights of the Employer, subject to the express conditions of the agreement.

The foregoing itemizations are descriptive of the general rights of Management and are not to be construed as limitations thereon.

* * *

Article 20 Grievance Procedure

Any differences, disputes or grievances relating to the interpretation of this Agreement which arise during the term of the Agreement shall be disposed of as provided by this grievance and arbitration procedure.

....

Once an arbitrator is selected, he or she will hear the case within ninety (90) days from the date of selection. A decision must be rendered by the arbitrator within thirty (30) days after the close of the hearing which shall be extended to sixty (60) days should either party desire to file a brief. The expense for the arbitrator shall be borne jointly by the parties. The arbitrator shall be bound by the terms of this Collective Bargaining Agreement and shall have no right in any way to modify or revise it.

JOB DESCRIPTION

BANQUETSERVER
(BQTSRV)

JOB SUMMARY

The Banquet Server is responsible for the set-up and serving of food and beverages to guests at all banquet functions, according to the hotel standards.

QUALIFICATION STANDARDS

Education & Experience:

- High School diploma or equivalent and/or experience in hotel or a related field preferred.
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Physical requirements:

- Flexible and long hours sometimes required.
 - Medium work - Exerting up to 50 pounds of force occasionally, and/or 20 pounds of force frequently or constantly to lift, carry, push, pull or otherwise move objects.
 - Ability to stand during the entire shift.
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General Requirements:

- Must be able to effectively communicate both verbally and written, with all level of employees and guests in an attentive, friendly, courteous and service oriented manner.
- Must be effective at listening to, understanding, and clarifying concerns raised by employees and guests.
- Must be able to multitask and prioritize departmental functions to meet deadlines.
- Approach all encounters with guests and employees in an attentive, friendly, courteous, and service-oriented manner.

- Attend all hotel required meetings and trainings.
- Maintain regular attendance in compliance with Highgate Hotel Standards, as required by scheduling, which will vary according to the needs of the hotel.
- Maintain high standards of personal appearance and grooming, which includes wearing the proper uniform and nametag.
- Comply with Highgate Hotel Standards and regulations to encourage safe and efficient hotel operations.
- Maximize efforts towards productivity, identify problem areas and assist in implementing solutions.
- Must be effective in handling problems, including anticipating, preventing, identifying and solving problems as necessary.
- Must be able to understand and apply complex information, data, etc. from various sources to meet appropriate objectives.
- Must be able to cross-train in other hotel related areas.
- Must be able to maintain confidentiality of information.
- Must be able to show initiative, including anticipating guest or operational needs.
- Perform other duties as requested by Management.
- Maintain a warm and friendly demeanor at all times.

FACTUAL BACKGROUND

The Boston Park Plaza Hotel hosts banquets. It has 70,000 square feet of banquet and meeting space. The Hotel employs twenty-two (22) Long-End Servers. The Long-End Server is “responsible for the set-up and serving of food and beverages” at the Hotel banquet functions. Union members staff these banquets as on-call, Preferred, and Long-End Servers. (J.1). The Hotel recognizes Long-End Servers as full-time employees, with all of the rights and benefits of a full-time employee, including health insurance, legal fund, education fund, housing fund, and pension contributions. (J.1). Long-End Servers are the first to work staff events and consequently work more events than other servers and receive commensurate gratuities. If additional servers are needed, servers from the preferred list are offered the work. After the preferred list is exhausted,

on-call servers are offered work. Long-End positions are highly sought after and rarely become available.

In 2022, increased business required new banquet space. After seven years of no Long-End positions becoming open, the Hotel added six Long-End positions, raising the total from sixteen (16) to twenty-two (22). [REDACTED] [REDACTED] ([REDACTED]), Director of Human Resources, testified that becoming a Long-End required the employee to work as a Banquet Busser before they could be promoted to Long-End. At this Hotel, Banquet Bussers perform traditional busser work, supporting servers at large and small events. A banquet busser is responsible for setting up and serving food and beverages to guests at banquet functions. (J.2).

In 2023, a Long-End Server died, opening a Long-End Server position. Human Resources Manager [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED]) posted the position. The Hotel received applications from internal and external candidates during the two (2) weeks the post remained active. The Hotel used the same selection process in July 2023 that it used in 2022 when it selected six (6) applicants for the Long-End Server position. The Hotel posted the position for two (2) weeks or more than five (5) days, as stated in the CBA. (J.1). Six (6) internal candidates applied, and one (1) external candidate applied. The Hotel deemed the six (6) internal candidates qualified and did not consider the external applicant.

The six (6) internal employees and their seniority dates were:

1. [REDACTED] [REDACTED] April 28, 1987
2. [REDACTED] [REDACTED] November 7, 1989
3. [REDACTED] [REDACTED] May 28, 2008
4. [REDACTED] [REDACTED] 2011 ([REDACTED] was the only unsuccessful candidate not to file a grievance)
5. [REDACTED] [REDACTED] - [REDACTED] March 16, 2013
6. [REDACTED] [REDACTED] July 12, 2015

█████ testified that on June 7, 2023, █████ █████ (“█████ told him that █████ █████ would get the Long-End promotion, but █████ would get the next one after that. █████ photographed the Banquet Event Opportunity (“BEO”) posting to document █████ - █████ name listed and his dialogue with █████ (U.7). █████ █████ (“█████ Houseman, testified he has worked for the Hotel for thirty-nine (39) years. He heard manager █████ and Director of Banquets █████ █████ (“█████”) discussing the Long-End position and saying anyone could apply, but management already knew who they wanted to hire. █████ testified that Union Representative █████ █████ called him about the comments, but the managers denied making the statements.

█████ █████ contacted █████ to schedule interviews. All candidates were interviewed as part of the selection process. The applicants were asked the same questions. █████ █████ testified that █████ answered the questions better in 2022 than she did in 2023. █████ █████ documented the candidates’ responses to the questions. (E.1 and E.2). Management accepted all interviewees’ answers at face value. █████, █████ █████ and █████ interviewed the candidates, except for █████ whom █████, █████ █████ and █████ █████ interviewed. (U. 2b, 3b, 4b, 5b, and 5). The interview questions were about background, experience, and general questions about performing the work. One question measured experience in the position and asked, “How many banquet functions have you worked at the Boston Park Plaza, and what meal periods?” The recorded answers were:

1. █████ About 5
2. █████ █████ 0 at BPP and 20 or so
3. █████ █████ 1 Dinner
4. █████ █████ From 10/2022 -7-10 Dinners
5. █████ █████
As a server over the 9 Years, I have worked 100+ events in all meal periods. (E.1 p.2)
6. █████ █████ Dinner Only -25

██████████ testified she has worked at Park Plaza for one and a half (1½) years and was involved in recruitment for the position of Long-End Server. She played no part in the selection process. There were six (6) qualified internal candidates. The selection process consisted of a Banquet Server questionnaire (U.2a, 3a, 4a, 5a, and 6), a summary of the interview questions, the criteria responses, and the candidate answers are recorded in E. 1 and E. 2. The first question was “tell me about your work experience?”

After the interviews, a selection committee meeting was scheduled with managers, Senior VP ██████████ (██████████ General Manager ██████████ (██████████ Director of Food and Beverage ██████████ (██████████ HR Director ██████████ and ██████████ ██████████ She did not take part in the decision-making process. The selection committee was ██████████ ██████████ ██████████ ██████████ and ██████████

All managers voted for the same person, ██████████. ██████████ revealed the name. The candidate’s experience as a server made the difference, and ██████████ indicated he had worked as a server for 100 plus events at the Hotel. The specific question was, “How many banquet functions have you worked at the Boston Park Plaza, and what meal periods?” ██████████ ██████████ recorded answer was, “As a server over the 9 Years I have worked 100 plus events in all meal periods.” (E.1). “As a Bar back, I have worked over 80 events in the past 9 months.” (U.6). Interview question “How many banquet functions have you served in the past 12 months?” ██████████ ██████████ recorded answer was “16 as a server.”

██████████ testified that the job description of a Banquet Server applies to the three kinds of Banquet Service: long-end, preferred, and on-call. A Banquet Bar back preps for the bartenders. A Bar back is not responsible for food. Experience was an important factor in the selection of the Long-End Server. ██████████ provided detailed answers about his

experience, including working at 80 events in the past nine months. [REDACTED] [REDACTED] testified the Hotel would provide training for the Long-End Servers after the job was filled. BEST classes provided relevant experience and opportunities to be a table server. [REDACTED] [REDACTED] [REDACTED] and [REDACTED] took the BEST class. Every Grievant attended the BEST course, and [REDACTED] [REDACTED] and [REDACTED] scored at least 78%. [REDACTED] had applied for a Long-End position in 2022 and had interviewed extremely well but did not interview as well in 2023. [REDACTED] [REDACTED] testified no one looked into [REDACTED] response.

[REDACTED] [REDACTED] testified that after the interviews, she continued recording the interviewers' notes for each candidate and placed the information on a spreadsheet. (E. 1 and E. 2). With completed notes, [REDACTED] [REDACTED] held a meeting in July to select the Long-End Server. [REDACTED], [REDACTED] [REDACTED] and [REDACTED] attended the meeting.

[REDACTED] [REDACTED] redacted the first and last names of the applicants before sending the data to the selection committee. [REDACTED] [REDACTED] testified that she redacted names to ensure the candidates' anonymity and objectivity. The answers to the interview questions provided clues as to the applicant's identity. [REDACTED] answered, "I have nine years experience as an on-call server. My family has all worked and works here." [REDACTED] family connections include his mother, [REDACTED] and his sister, [REDACTED] who works for the hotel. [REDACTED] knew [REDACTED] mother was a Long-End. Another sister is a bar back, and the other is an on-call server at the hotel.

All of the Grievants went to the BEST training, but [REDACTED] received a certificate of attendance, not a certificate of completion. [REDACTED] [REDACTED] did not participate in making the decision. [REDACTED] testified that [REDACTED] answers were the best of all the interviewers, and [REDACTED] was impressed with the number of events [REDACTED] worked on.

After the committee selected [REDACTED], he attended two (2) weeks of training to work as a Banquet Server. The unsuccessful candidates were directed to reapply after acquiring more banquet serving experience and apply to the on-call list.

[REDACTED] testified he has been in his position for ten (10) months. He was the Director of Catering events for the prior nine (9) years. The selection committee decided after the meeting. [REDACTED] [REDACTED] [REDACTED] and he chose. [REDACTED] testified that during the rounds of hiring for the Long-End Server position in 2022, the BEST training was counted as table service experience and advanced training for Long-End Servers. The committee followed the contract language and considered experience, answers to the questionnaire, and experience with customer-driven services. He described the group of candidates as “great.” [REDACTED] had experience as a barback and had worked at 100-plus events. The only data the selection committee used was the interview spreadsheets. (E.1 and E.2).

[REDACTED] Banquet Busser, testified he has worked at the Hotel for 16 years. [REDACTED] told him he would get the job after [REDACTED]. He took the BEST course, passed the test, and earned a certificate. [REDACTED] testified he had known [REDACTED] since 2021, and [REDACTED] was a bar back then. He was not a server. The first time he saw [REDACTED] working as a server was last year, June-July 2023. The Hotel closed during COVID-19 in 2020 and had no business in banquets through August 2020.

Works, the chief shop steward, testified that he has worked at the Park Plaza for thirty-eight (38) years. [REDACTED]s sister works as an on-call server, and his mother works as an on-call bartender. The BEST course was designed to help employees gain experience with table service. [REDACTED] completed the course. [REDACTED] and [REDACTED] told him that they had the person they wanted.

██████████s testified he has been in his position since October 2022. He investigated the claim that ██████████ told ██████████ that the Hotel had already selected the person for the Long-End Server position. He found no evidence supporting ██████████ claim. When the conversation allegedly happened, ██████████ ██████████ was not working.

The decision was made after July 5, 2023. Interviews happened on June 13, 2023. As of June 13, 2023, ██████████ had eight (8) months of full-time service. ██████████ testified that ██████████ was selected on the strength of his experience. ██████████ had worked 100 shifts between October 2022 and June 2023 and had worked as a server sixteen (16) times.

██████████ reviewed business records and testified that ██████████ had worked only a total of sixteen (16) server shifts during the period of 2014 to 2023. The 100 reported shifts were inaccurate. The sixteen (16) shifts occurred between October and May 2022-2023. The 16 shifts were on-call banquet service. ██████████ testified he pulled records back to 2014, and ██████████ worked sixteen (16) events as a server between October 2022 and June 2023. ██████████ began working full-time in October 2022 as a barback, supporting bartenders with no food or serving responsibilities.

██████████ testified he has been in his position for two (2) years. He took part in the selection process. The committee did discuss the candidates after the selection was made. ██████████ testified that ██████████ did not complete the BEST course because his behavior changed during the course. He started the classes being very helpful, but later, he started missing classes and calling out, returning late from breaks, sleeping in class, or making phone calls during class. ██████████ received a certificate of attendance but did not complete the class.

██████████ testified he looked for strong teamwork, unit cohesion, and interactions with Bussers in the candidates because they were very important qualities. ██████████ equated the BEST training with experience as an on-call banquet server. ██████████ did not attend the BEST training course. ██████████ was the instructor for the BEST course, but whether the applicant took the course was not factored into the selection process because he wanted to avoid influencing the decision. The interview answers mattered, not the class. He gave ██████████ a certificate of attendance because he wanted to show “some kind of acknowledgment,” but ██████████ did not complete the BEST training.

UNION’S POSITION

The Union argues the Hotel violated the CBA when it promoted a pre-selected candidate to one of the most coveted positions. The Hotel’s rationale was that the candidate was selected because of his interview performance. However, the candidate’s information during the interview was inaccurate and misleading. The Hotel intentionally ignored quantifiable qualifications criteria, including actual experience performing the same work and training to perform the work. The Hotel promoted a candidate with less than one (1) year of service and no formal training. The candidate had multiple family connections, and managers knew who would be selected before the interviews began. Multiple management witnesses could identify ██████████ family connections. The Union requests the Arbitrator sustain this grievance and order the Hotel to rescind the promotion and award the Long-End Server position to the senior-qualified candidate unless a junior-qualified candidate is the most qualified.

The Union maintains the Hotel must prove ██████████ was the most qualified. The Hotel deliberately ignored relevant evidence of qualifications. The Hotel ignored each applicant’s actual experience as a Banquet Server. Two candidates, ██████████ and ██████████ had twelve (12) and

nine (9) years of experience as Banquet Bussers. The Hotel maintains records of banquet events but did not review the information as part of its decision-making process. The Hotel only considered what the interviewee told them about their work experience. The Hotel did not verify the answers to reflect the actual work experience.

The Hotel did not consider its recommended training, known as BEST. ██████████ testified that he told ██████████ to take the BEST training to get the next Long-End position. The BEST training is designed to make a candidate better qualified to perform as a Banquet Server. Every Grievant attended the BEST course and scored at least 78%. The Hotel did not consider the Grievants' attendance or their performance on the final exam. Every candidate had more experience working in the Hotel than ██████████

The Union asserts the selection process was tainted before it began, and managers manipulated it to select ██████████. The decision to bypass a more senior employee needs to be justified by more than a minor difference, citing Bornstein, Gosline, Greenbaum, *Labor, and Employment Arbitration § 27.04 [1][b] Rel. 132, April 2005*).

In general, employers determine the selection criteria, and arbitrators have required that the criteria be applied fairly and impartially to ensure a reasonable outcome. The Employer's determination must be supported by specific and understandable evidence. See *Ford Motor Company, 2 LA 374, 376 (Shulman 1945)*.

The Union contends the Hotel is free to establish the qualifications for the Long-End position. However, it must support its conclusions with evidence that ██████████ was more qualified than the other applicants because he was the least senior candidate.

The Union insists the evidence established that ██████████ was not the most qualified applicant. The Hotel used work experience as a Banquet Server and general knowledge

about banquet services as qualifications for the Long-End position. [REDACTED] [REDACTED] had the least experience as a server and was not the most qualified. When considering work experience, every candidate had more than [REDACTED] Work experience is the quintessential indicator of ability and is given significant weight by arbitrators.

The Hotel asked candidates multiple questions about work experience. The Hotel managers confirmed that they relied on [REDACTED] claimed work experience as part of their determination that he was the most qualified. Other than [REDACTED] [REDACTED] had the least experience of any applicant. [REDACTED] had worked twenty (20) banquet events at other properties. (E.2). Management told unsuccessful candidates that they needed to work more banquets to improve their chances of becoming a Long-End Server. [REDACTED] did not have superior banquet knowledge. The other candidates had completed the BEST training. Management's reliance on only the interview process revealed flaws. The interview process needed to reflect the true knowledge of the senior candidates.

The interview process revealed how well the applicants interviewed, not their positive prior work experience. Interviewing well is optional for a Long-End Server. Superior work experience demonstrated superior knowledge of banquet work, as did BEST training, prior interviews, and actual job performance. Management mistakenly credited [REDACTED] with service as a server since 2014 and over 100 events. This information was relevant and material to its decision and easily verified. Failing to verify this essential factor in the selection process resulted in a flawed outcome.

The Union maintains the Hotel's predetermined preferences tainted the process. Before the selection process started, members heard multiple managers say that [REDACTED] would get the Long-End position, and miraculously, [REDACTED] was awarded the position. Even

██████████ answers to questions are provided in a positive flavor with enhanced notes, while the answers the other applicants gave are curt and minimized. The interviewers favored ██████████ over the other candidates.

The recorded answers are not accurate. The notes reflect ██████████ statement that he had worked “100 plus events in all meal periods as a banquet server for over 9 years” (E. 1, E. 2). His answer is inaccurate. The decision-makers relied on this inaccurate answer when making their selection. The decision to ignore BEST training favored ██████████ over the other candidates. The decision-makers ignored the evidence of completing the highly suggested BEST training. The Hotel’s decision to ignore the experience and training of applicants to favor the least senior candidate for the desired result violated the CBA.

HOTEL’S POSITION

The Hotel argues that ██████████ is more qualified than other applicants. The Hotel maintains the Union did not meet its burden of proof in establishing a violation of the CBA. The Hotel’s management rights give it the exclusive right to determine the promotion process, qualifications, and who to promote. The Hotel’s selection process is fair and reasonable, and the Union introduced no evidence of discrimination, caprice, or bad faith. The Hotel asserts it would have been impossible to verify each applicant’s answer about previous banquet serving experience because an applicant could have gained experience elsewhere.

The three (3) senior Grievants are not more qualified for the position. The Union’s proposed remedy would require the arbitrator to modify or revise the CBA in violation of Article 20. The Hotel did not show favoritism and/or pre-select ██████████. The Hotel maintains that ██████████ is far more qualified than the other candidates. A committee of managers reviewed the spreadsheets that ██████████ ██████████ created. Those managers, ██████████ ██████████

██████████ ██████████ and ██████████s, formed the selection committee and carefully and thoroughly reviewed and discussed the candidate's answers. ██████████ testified that ██████████ ██████████ interview responses demonstrated that he is far more qualified based on his answers about the number of banquet events served: "100 plus in all meal periods, including 16 as a server, in the previous 12 months."

The Hotel insists other candidates had far less banquet serving experience. Concerning knowledge of the Long-End Server job, the Hotel argues ██████████ responses were superior. ██████████ gave incomprehensible answers. Only ██████████ and ██████████ could properly describe a table set up for a three-course meal. ██████████ correctly answered questions about wines and serving hors d'oeuvres. ██████████ and ██████████ provide acceptable answers about serving hors d'oeuvres.

The Employer's witnesses testified that the decision was not made until the management committee met to review the applicant interviews. The Hotel argues they advised each applicant not selected ways to improve for future openings. The Hotel argues that Article 15 does not require selection by seniority only, and the submission of grievances of applicants who were not the most senior undercuts the Union's position.

The Hotel asserts the Union failed to meet its burden of proving that the Employer violated the CBA. Article 15 is a relative ability clause that compares qualified employees bidding for the job. Seniority becomes a determining factor only if the qualifications of the bidders are equal. Citing *Kroger Co., 89 DNA LA at 1311*, "Seniority never comes into play where the record establishes that the junior employee has superior skills, qualifications, or performance compared to the senior employee."

The Employer argues it has the exclusive right to determine promotions and qualifications. These rights are subject only to the express conditions of the CBA. (J.1). Article 15 is the only limit on the Employer's right to make promotions. The Hotel maintains it is entitled to make the initial determination. Management's decisions must be upheld where they are fair and reasonable and supported by evidence.

██████████ was far more qualified than the other applicants, as demonstrated by his answers about his banquet server experience, guest service, and teamwork. He knew more about banquet set-up procedures, service requirements, food and beverage products, and service standards than the other applicants. The Hotel highlighted ██████████ superior performance during an interview. The selection process conformed with Articles 15 and 19, and the Arbitrator may not modify the CBA. The Union presented no evidence that ██████████ was an inappropriate selection.

The Employer did not engage in favoritism. The testimony of ██████████ and chief shop steward ██████████ gave conflicting accounts of what they heard. ██████████ testified that ██████████ told him he would get the job after ██████████ ██████████ referred to a job at a banquet event, not the promotion.

██████████ testified that he overheard a conversation between ██████████ and ██████████ in the afternoon on June 12, 2023. ██████████ did not work on June 12, and ██████████ left before ██████████ shift started. ██████████ testified that ██████████ complained to him about overhearing a conversation between ██████████ and Banquet Manager ██████████ ██████████. He investigated and found no evidence to support ██████████ claim. ██████████ testified that he researched ██████████ banquet service, and he worked as an on-call banquet server at 16 events at the Hotel 12 months before his interview on June 13, 2023.

The Hotel contends it has a nearly absolute right to manage the business, and the CBA is a series of bargained-for limitations on the Employer's authority to manage and direct the workforce. The Hotel met each requirement of Article 15 because [REDACTED] is far more qualified than every other candidate, even if the Employer shortcuts the interview and committee selection process.

Finally, the Hotel insists that applicants who completed the BEST training program are deemed “qualified for that classification.” However, [REDACTED] the most senior applicant, failed to complete the course. BEST is not the only source for banquet server training. [REDACTED] and [REDACTED] are not more qualified than [REDACTED]. The Hotel asserts it would have been impossible to verify each applicant’s answer about previous banquet serving experience because an applicant could have gained experience elsewhere. The Hotel argues that [REDACTED] is far more qualified than other candidates.

OPINION

After carefully reviewing the record, the Union convinced me that [REDACTED] promotion violated Article 15 of the CBA. The grievance is sustained. The standard of review I used is whether the Union convinced me that the Employer violated the Agreement by the preponderance of the credible evidence, making it more likely than not that [REDACTED] promotion violated Article 15 of the CBA.

Article 15 reads,

Employees may submit written requests for such promotional opportunities within the posting period subject to the need for external hiring specified in paragraph one. The Employer will give consideration to such bids, and the senior qualified employee will be given the opening unless a junior employee is more qualified. The Employer may also determine not to fill the job.

Article 15 gives senior-qualified employees preference in promotional opportunities. To be given the promotion, a junior employee must be more qualified than the senior-qualified employee. Employees are evaluated on experience, knowledge, and skill. The senior employee needs to be qualified, while the junior employee needs to be more qualified than the senior employee.

██████████ answers to relevant and material questions were inaccurate and misleading. The Employer could have easily verified the information. Yet, it relied on incorrect and misleading answers to determine that ██████████ was more qualified than employees with more seniority and equal or superior experience with the Hotel, specifically banquet serving experience. The Hotel's reliance on inaccurate and misleading information that management could have easily verified renders its decision unfair and unreasonable.

The Hotel considered the interviewees' answers to questions about their prior work experience versus their actual work experience. Misleading and inaccurate information improperly influenced decision-makers on two fronts: 1.) the information gave the impression that ██████████ ██████████ had much more experience than he had, and 2.) ██████████ answers raise the question of whether he deliberately and intentionally enhanced his experience as a server to mislead the interviewers, thereby bolstering his chances of obtaining the promotion.

Either way, the interviewers relied on the inaccurate information that ██████████ supplied. The information was false and easily verified. Instead of working 100-plus banquet-serving events at the Hotel, he only worked 16 events, all taking place between 2022-2023. Grievants ██████████ ██████████ ██████████ and ██████████ took the BEST training class, which gave them experience as banquet servers. Yet, ██████████ testimony revealed that their authentic experience as banquet servers was not credited or factored into the selection process. ██████████ was less qualified than more senior qualified employees.

The Hotel argues that including ██████ invalidates the Union's position. If the most senior person should have been given the position, then ██████ is not more qualified than ██████. The Hotel's position is unpersuasive. The Hotel deemed ██████ qualified, although he still needs to complete the BEST training, which counts towards server experience. Had he completed BEST training, his experience would have been at least the same, if not superior, to ██████ experience based on his claim of 100-plus events.

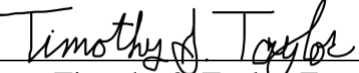
The evidence did not support management's decision to promote ██████ and thus was not fair and reasonable. The decision was incorrect because the Hotel relied on inaccurate and misleading information to promote ██████. He is not more qualified than the more senior candidates.

After consideration of the record, relevant parts of the CBA, the arguments presented and consistent with the procedures of the parties, the Arbitrator makes the following:

AWARD

1. The Hotel violated Article 15 when it promoted [REDACTED] to the position of Long-End Server. [REDACTED] was not the appropriate candidate for this position.
2. The Hotel shall rescind the promotion and award the Long-End Server position to the senior-qualified candidate.
3. The Employer must select the appropriate candidates from one of the four (4) Grievants.
4. I retain jurisdiction for the implementation of this Award.

Dated: April 17, 2024
Pittsfield, MA



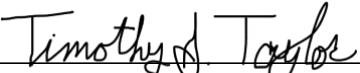
Timothy S. Taylor, Esq.
ARBITRATOR

AFFIRMATION

COMMONWEALTH OF MASSACHUSETTS)
BERKSHIRE COUNTY) ss.:

I, Timothy S. Taylor, affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

Dated: April 17, 2024
Pittsfield, MA



Timothy S. Taylor, Esq.
ARBITRATOR