

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
FOR REHEARING OR CLARIFICATION

In its motion for rehearing or clarification, the Respondent contends that the Commission should state what is meant by the expression "compensated at the employee's regular rate" found in paragraph 4 of the Arbitrator's award dated December 2, 1976. The Respondent points out that it argued in its brief to the Examiner dated May 20, 1977 as follows:

"V. Alternatively, if standby is considered approved overtime, the maximum compensation is eight hours pay for each day.

"Should the Examiner rule that standby status was approved overtime for compensation it is the position of the Employer that each employee could receive no more than eight hours pay for each day of standby status on days the employee was not scheduled for regular duty.

"Mr. Nelson testified that even in those situations where employees are assigned overtime, which is approved for compensation, for one of their normal off-days, the practice of the department when the contract became effective was to compensate for no more than eight hours per day. (TR-13) Since this practice was incorporated into the contract under Article VII, Section 2(B) then the maximum compensation per day required by the Agreement would be eight hours.

"The policy of the department also recognizes the professional status of these employees by authorizing overtime credit only for work on non-scheduled days. Therefore, if an employee worked ten hours on a regularly scheduled work day, no overtime credit would be earned for the two extra hours. In effect, the most an employee could be compensated for any given day, regardless of the number of hours, would be eight hours (Ex. 5) Since this policy was also adopted by the language of Article VII, Section 2(b), then the contract only requires a maximum of eight hours pay per day. (Ex. 1)

"The Arbitrator's award (Ex. 2) violates the contract in virtually all these areas. By ordering compensation for all standby time except midnight to 8 a.m. he has ordered pay for more than eight hours per day. On the non-scheduled days the award orders sixteen hours pay and for the scheduled days the award requires compensation in addition to the regular duty, specifically on Friday evening. Clearly, this relief is in violation of the policy incorporated into the contract and, therefore, in violation of the contract itself."

In responding to this argument, the Examiner reasoned as follows:

"Respondent also claims that 'if standby is considered approved overtime, the maximum compensation is eight hours pay for each day.' If the employees were on standby for only eight hours, this argument might have some merit. Here, however, employees in some cases were ordered to be on standby for more than eight hours. Accordingly, there is no basis for reversing Arbitrator Krinsky's finding that employees are entitled to be compensated for all hours worked, exclusive of sleeping."

This argument was repeated in the Respondent's brief to the Commission dated October 21, 1977 and the Commission affirmed the Examiner's decision in all respects.

The Complainant objects to said motion and contends that the Respondent presented evidence with regard to said argument at the original hearing before the Arbitrator on July 16, 1974. It is the Complainant's position that, notwithstanding said evidence, the Arbitrator concluded that employees on standby should be compensated at their regular hourly rate. According to the Complainant, the petition for rehearing should be denied and that "Clarification" needed can be supplied by way of example.

DISCUSSION

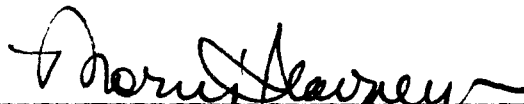
The Commission originally remanded the arbitration proceeding to Arbitrator Krinsky because, in the Commission's view, he exceeded his authority with regard to the remedy. After affording the parties the opportunity to present further argument and evidence, the Arbitrator determined that under the terms of the agreement the employees were entitled to be compensated at their "regular hourly rate" for "all hours between 8:00 a.m. and midnight." There can be no doubt as to what is meant by the expression "regular hourly rate." The hourly rate of the employees involved is readily ascertained by a reference to the Respondent's payroll records during the periods covered by the award.


The argument presented here goes to the appropriate remedy rather than the meaning of the award. At the hearing before the Arbitrator held on September 23, 1976, the Respondent had the opportunity to present such evidence and argument as it deemed relevant in support of its claim that the employees in question should receive no more than eight hours of overtime credit or pay in one day for standby duty. The Arbitrator held that under his interpretation of the terms of the agreement the employees were entitled to be compensated at their regular hourly rate for all hours between 8:00 a.m. and midnight, and the Respondent is bound by its agreement to accept the terms of his award.

Dated at Madison, Wisconsin this 28th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner