

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 TEAMSTERS LOCAL UNION NO. 662 :
 :
 and : Case 1
 : No. 42572
 : A-4477
 FERRELLGAS, INC. :
 :

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at
 Law, by Mr. William Kowalski, appearing on behalf of the Union.
 Mr. David Grosse, Manager-Employee Relations, Ferrellgas, appearing on
 behalf of the Company.

ARBITRATION AWARD

The above captioned parties, hereinafter the Union and the Company respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing, which was not transcribed, was held on October 24, 1989, in Eau Claire, Wisconsin. The Company's brief was filed November 15, 1989 and the Union filed a waiver of brief on December 4, 1989. Based on the entire record, I issue the following award.

ISSUE

The parties stipulated to the following issue:

Did the Employer violate the collective bargaining agreement when it denied holiday pay to the grievant for Memorial Day, 1989? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1987-90 collective bargaining agreement contains the following pertinent provisions:

ARTICLE XVI
HOURS OF WORK, OVERTIME AND HOLIDAYS

. . .

Section 7. The specified legal holidays are:

. . .

Memorial Day

. . .

or days observed as same, and they are to be paid for at the rate specified below, even though no work is performed on such days. . . .

. . .

Section 10. To be eligible for holiday pay, specified or floating, an employee must be a regular full-time employee on payroll records three (3) months prior to any of the legal holidays in order to qualify for holiday pay. He must also be available for work on the last scheduled working day prior to the holiday and the first scheduled working day following the holiday, unless excused by the Employer. Employees must also work in the week in which the holiday falls, except when the employee is on vacation or compensable sick leave. When on vacation, holiday pay shall be granted in accordance with the provisions of Article XII, Section 5.

FACTS

The facts are undisputed. Grievant Gerald Nolan has worked for the Company for two years with his regular work week being Monday through Friday.

He was off work from October, 1988 through May, 1989 1/ due a light duty restriction and received workers' compensation during that time. On May 8, his physician gave him a return to work slip that said he could return to work May 27. Nolan gave this return to work slip to his supervisor, Scott Barnes, that same day. Barnes told Nolan that since Saturday, May 27 was not a regular work day and since Monday, May 29 was the Memorial Day holiday, he was to report to work on Tuesday, May 30, which he did. Nolan was not paid for the Memorial Day holiday, Monday, May 29, and he grieved. The Company denied the grievance and the matter was appealed to arbitration.

POSITIONS OF THE PARTIES

The Union contends the Company violated the contract when it failed to pay the grievant holiday pay for Memorial Day. According to the Union, the grievant met all the requirements for holiday pay eligibility found in Article XVI, Section 10 so therefore he should have received holiday pay. In the Union's view, the grievant met requirements one and three and was exempted from the second requirement because of the nature of his absence on Friday, May 26. As a remedy for the alleged contract violation, the Union asks that the grievant be paid for the holiday in question.

The Company's position is that it did not violate Article XVI, Section 10 when it denied the grievant holiday pay for Memorial Day. In the Company's view, the grievant was not entitled to holiday pay for that day because he did not meet one of the eligibility requirements for holiday pay, namely, the second requirement that an employe must work on the last scheduled working day prior to the holiday. The Employer notes in this regard that the last scheduled working day prior to Memorial Day was Friday, May 26, and the grievant did not work on that day. Therefore, the Company contends it was within its contractual rights when it denied the grievant holiday pay.

DISCUSSION

Article XVI, Section 10 lists three requirements for holiday pay eligibility: 1) the employe must be a regular full-time employe on the (Company) payroll three months prior to the legal holiday; 2) the employe must be available for work on the last scheduled working day prior to the holiday and the first scheduled working day following the holiday, unless excused by the employer; and 3) the employe must also work in the week which the holiday falls, except if the employe is on vacation or on compensable sick leave. Employes must meet all three of these requirements in order to receive holiday pay.

This dispute centers upon the second requirement identified above because the Company's stated reason for denying holiday pay to the grievant was that in its view, he did not meet that requirement.

The eligibility requirement in issue contains two subparts, to wit: that the employe must be available for work on the last scheduled working day prior to the holiday and the first scheduled working day following the holiday. Here, the grievant met the latter requirement but not the former. This is because he was available for work on the first scheduled work day following the holiday (namely Tuesday, May 30), but he neither worked nor was available for work on the last scheduled work day prior to the Memorial Day holiday (namely Friday, May 26) since his physician's return to work slip indicates the earliest he could return to work was Saturday, May 27. That being the case, Nolan did not meet one of the two parts of this eligibility requirement.

Having said that, this does not automatically mean that the grievant was not eligible for holiday pay. This is because the second eligibility requirement goes on to provide an exception to that entire requirement for an absence which is "excused by the employer." The contract though does not define an "excused" absence nor are any examples listed therein. Moreover, there is no evidence in the record of a past practice involving similar situations which could be used as a guide in interpreting this phrase. That being so, the undersigned will determine whether the grievant's absence on Friday, May 26 was "excused by the employer."

I find, based on the following rationale, that the absence was "excused by the employer." Certainly the grievant's absence that day was not unexcused in the sense that he did not have a valid reason for it or that the Company did not know where the grievant was. On that date, the grievant was still off work due to a light duty restriction and presumably was receiving temporary disability pay provided by workers' compensation. He could not have worked that day even if he wanted to because he had not yet been authorized to return to work by his physician. Thus, his absence that day was workers' compensation related and the Company knew it. Since the grievant's absence that day was not unexcused, I believe it logically follows that the converse must be true; namely, that the absence was excused. Said another way, the grievant was on an authorized absence that day. Accordingly, it is held that the grievant's workers' compensation related absence on Friday, May 26 qualifies as one "excused by the employer" within the meaning of Article XVI, Section 10. That

1/ All dates hereinafter refer to 1989.

being so, the grievant was exempted from the second eligibility requirement.

In light of this conclusion that the grievant was exempted from the second eligibility requirement of Article XVI, Section 10, it follows that he was eligible for holiday pay for Memorial Day because that was the only eligibility requirement in issue herein.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Employer violated the collective bargaining agreement when it denied holiday pay to the grievant for Memorial Day, 1989. In order to remedy this contractual violation, the Company shall pay the grievant holiday pay for that day.

Dated at Madison, Wisconsin this 13th day of December, 1989.

By _____
Raleigh Jones, Arbitrator