

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 THE SELMER COMPANY :
 :
 and : Case 2
 : No. 43328
 : A-4566
 GREATER FOX RIVER VALLEY DISTRICT :
 COUNCIL OF UNITED BROTHERHOOD OF :
 CARPENTERS AND JOINERS OF :
 AMERICA, AFL-CIO :
 :

Appearances:

Mr. Paul D. Lawent, General Counsel, AGC, on behalf of the Company.
Mr. Ronald Kopp, Secretary/Business Manager, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the Company and the Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on March 15, 1990, in Green Bay, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by March 28, 1990.

Based upon the entire record, I issue the following Award.

The parties stipulated to the following issue:

If an employee is called out on a Sunday for part-time work under Section 10.6, what rate of pay is the employee guaranteed if he works less than four hours? The arbitrator is asked to decide whether the employee is entitled to a guarantee of either four hours at straight time or four hours at double time.

DISCUSSION:

The Company on Sunday, November 26, 1989, called out Millwrights Butnick, Bellin, and Helms to perform routine maintenance work on a turbine roller at James River, a local paper company which has a maintenance and repair contract with the Company. Said work took about two (2) hours to perform, from 5:00 p.m. - 7:00 p.m. The Company then paid each of them two (2) hours pay at double time.

The Union thereafter filed the instant grievance, claiming that they should have been paid four (4) hours at double time because the contract provides that Sunday work is to be paid at double time and because it also provides that any employees called in for work must be paid a minimum of four (4) hours call in pay. The Union points out that call in is paid in order to properly compensate employees for the "time preparing to go to work, time worked and time to return home from work which is all time spent away from their family and normally time spent outside activities away from work." The Company, in turn, asserts that while Section 10.6 of the contract is ambiguous, "It would be unconscionable to ask an owner to pay these [the Union's requested] rates" because that could result in the payment of \$132.08 to employees even if "they theoretically worked only five (5) minutes", and that sustaining the grievance will only result in a loss of work for union contractors and force the Company to find make work for employees if similar situations reoccur.

The key to resolving this issue is Article X of the contract, entitled "Hours of Work," which provides in pertinent part:

"Section 10.02 **OVERTIME, SATURDAY, SUNDAY AND HOLIDAY WORK.**

- (a) All time in excess of eight (8) hours per day, all time worked before 6:00 a.m. or after 6:00 p.m. and all time worked on Saturday shall be paid at the rate of one and one-half times the established hourly rate of pay with the exception of time worked on Saturday make-up which shall be at straight time.
- (b) All time worked on Sundays and legal holidays shall be paid for at double the established hourly rate of pay. Time worked between 6:00 a.m. Sunday and 6:00 a.m. Monday is considered Sunday work. The same principle applies to Holidays.
- (c) On projects of at least two weeks duration, the work week may, at the contractor's option, consist of a four-day forty-hour week, Monday through Saturday, consisting of four ten-hour days without overtime rates applying. However, Saturday may only be used as a straight-time day if time has been lost during a weekday due to inclement weather or conditions beyond the contractor's control. No one is to be discriminated against for choosing not to work Saturday. When working such workweek all hours worked in excess of ten hours per day shall be paid at one and one-half the hourly rate of pay. All hours worked in excess of forty hours after four work days shall be paid at one and one-half times the hourly rate of pay, and double time for Sundays and Holidays. The contractor shall advise the Union of the establishment of such workweek prior to implementation.

The workweek option provided for in this paragraph shall not be available when shift work, as provided for in Section 10.4 is being performed.

. . .

Section 10.6 **PART-TIME WORK:** Employees called out for part-time work shall receive a minimum of four (4) hours' pay. Employees not notified by the Contractor or his agent the night before and who reports for work at the regular time, shall be paid two (2) hours' pay if they are not put to work. These rules will not apply when inclement weather or other reasons beyond the contractor's control causes a stoppage of work."

The issue here turns upon the applicability of Section 10.6 which provides that "Employees called out for part-time work shall receive a minimum of four (4) hours' pay" and Section 10.2(b) which provides that "All time worked on Sundays and legal holidays shall be paid for at double the established hourly rate." In other words, do both of these provisions apply so that employees received a minimum of four (4) hours call-in pay plus the double time rate as contended by the Union, or just the double time rate for actual hours worked as contended by the Company.

The contract itself does not expressly answer this question. However, it is a basic principle of arbitrable law that different contract provisions are to be harmonized if at all possible so that their stated purposes can be achieved.

Here, two (2) different goals are provided for under this language: Section 10.2(b) provides for double time to those employees who must work outside their normally scheduled workweek in order to compensate them for disrupting their normal time off. Section 10.6 goes to another objective, i.e. to award employees a minimum of four (4) hours pay to compensate them for the inconvenience of driving themselves to and from work and to make it worth their while to only work a short time on the call out job in question.

There is nothing in the contract, such as an antipyrading clause, which prohibits payment under Sections 10(b) and 10 6. That being so, the Company is required to pay double time for all work performed on a Sunday and to also pay called out employes a minimum of four (4) hours at that rate for any such Sunday work. The Company's failure to do so here therefore violated the contract.

As a remedy, it shall make whole the three (3) employes by paying to them an additional two (2) hours pay at double time.

In so finding, I am mindfull of the Company's concern that sustaining the grievance may adversely affect its ability to obtain business and that it in the future may assign make work to employes in order to ensure that they work a full four (4) hours. By virtue of this grievance and the contract language in issue, the Company of course is entitled to do the latter. Any possible loss of business, however, is a separate question of what the contract requires in this situation and it is outside the scope of an arbitrator's very limited authority to apply the contract provisions as they are written. As a result, this concern cannot serve to negate the clear provisions of Section 10.02(b) and 10.6.

In light of the foregoing, it is my

AWARD

1. That employes called out on a Sunday for part-time work under Section 10.6 are to be paid a minimum of four (4) hours pay at double time.

2. That the Company shall make whole the three (3) employes herein in the aforementioned manner.

Dated at Madison, Wisconsin this 23rd day of May, 1990.

By _____
Amedeo Greco, Arbitrator