

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 DODGE COUNTY PROFESSIONAL EMPLOYEES :
 LOCAL 1323-A, AFSCME, AFL-CIO : Case 163
 : No. 45413
 and : MA-6594
 :
 DODGE COUNTY :
 :

Appearances:

Mr. Michael Wilson, Representative at Large, Wisconsin Council 40, on behalf of the Union.
Mr. Ralph E. Sharp, Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the County, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was appointed by the Commission to hear the matter. Hearing was held on May 28, 1991. The stenographic transcript was received on May 31, 1991. The parties completed their briefing schedule on June 26, 1991. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE:

The parties at hearing framed the issue as follows:

Whether or not the grievants are entitled to holiday pay for December 31, 1990 and January 1, 1991.

They further stipulated that if the grievance is found to be meritorious, the grievants will be paid two days pay for the holidays.

RELEVANT CONTRACT LANGUAGE:

ARTICLE X
HOLIDAYS

10.1 Each Employee with Dodge County shall be granted the following holidays with pay:
 Day before New Year's Day Labor Day
 New Year's Day Thanksgiving Day
 Good Friday Day after Thanksgiving Day
 Memorial Day Day after Christmas Day
 Independence Day Christmas Day

. . .

10.6 To be eligible for holiday pay, an Employee must work the scheduled day before and after the holiday unless absent due to verified illness or on approved paid leave.

ARTICLE XVI
GRIEVANCE PROCEDURE

- 16.3 Arbitration. If a satisfactory settlement is not reached as outlined above, the Union, within ten (10) days after the written answer is received or due from the Personnel and Labor Negotiations Committee, may request the Wisconsin Employment Relations Commission to appoint an arbitrator from its staff to hear the grievance, whose decision shall be final and binding on both parties. In rendering his decision, the arbitrator shall neither add to, detract from nor modify any of the provisions of the Agreement.

FACTS:

Jack Ingersoll and Kim Herman are employees of Dodge County Unified Services. Jack Ingersoll is a Psychiatric Therapist II at the Masters Degree level and has been employed by Dodge County for about three (3) years. Kim Herman is a Certified Alcohol and Drug Counselor III and has been employed by Dodge County for about one and one-half (1-1/2) years.

During December of 1990 and January, 1991, by use of a combination of holiday time, vacation time, "comp" time, and unpaid leave, Ingersoll was not at work from December 17, 1990 until January 8, 1991 and during roughly the same period Kim Herman by using a combination of "comp" time and unpaid leave was absent from work from December 19, 1990 through January 7, 1991. During this period there were the days of December 31, 1990 and January 1, 1991 that under the terms of the agreement that the Union has with Dodge County are paid holidays.

Based upon the following letter and the testimony of the employees involved, it appears that the supervisors determined exactly which days were to be designated "comp" time, paid or unpaid leave:

February 5, 1991

Desiree Wild
Unified Services Unit
199 Home Road
Juneau, Wi 53039

Dear Desiree,

At your request I am writing to officially acknowledge our recent meeting. When we met we discussed the two grievances which have been filed by Jack Ingersoll and Kim Herman.

I received both of the grievances and feel that the details stated therein are accurate.

I feel that it is unfortunate that any of this was necessary since it was an oversight on my part that I did not notice the "day off without pay" placed next to the holiday on Kim's time sheet. The same set of circumstances applied in the case of Jack Ingersoll where it was incorrectly placed next to the holiday. Jeanine Brown, Mr. Ingersoll's supervisor, was also unfamiliar with the regulation. Direct contact was made with Personnel and Payroll and discussion was held regarding this matter. It seemed to me that it could have easily been remedied by merely changing the day without pay to another spot during the week since in the case of both these employees, they were off for at least one full week of the pay period. My request to make the change was denied. In addition, David Titus, Director of Human Services, also spoke with the Personnel Department but they were unwilling to make the small adjustment that was needed.

As you are aware, I regret that this took place and certainly hope that it is still possible to remedy the situation and restore the pay to these two employees.

Sincerely,
June R. Beale, M.S.S.W.
ACTING DIRECTOR

Neither Ingersoll nor Herman worked the day of January 2, 1991. This day was designated on the payroll sheets as unpaid leave for both employes. The Personnel Department determined that neither grievant should be paid for either holiday, i.e. Day before New Year's Day or New Year's Day because the unpaid leave had been designated on January 2 1991 (Herman and Ingersoll) and January 3, 1991 (Ingersoll). There is no dispute that the grievants both satisfied the "work requirement" before the holidays at issue, the only question is whether or not the grievants met the work requirements following the holidays. Kim Herman returned to work on Thursday, January 3, 1991 and Jack Ingersoll returned to work on Tuesday, January 8, 1991. Neither grievant was advised of the loss or potential loss of holiday pay until sometime after their return to work subsequent to the holidays in question.

POSITION OF THE PARTIES:

Union

Citing Elkouri and Elkouri, How Arbitration Works, BNA 4th Edition, the Union stresses that it is generally agreed that the purpose of surrounding days' work requirements is to prevent employes from "stretching" holidays and to assure a full working force on the days before and after the holiday. According to the Union, the precise language used in a particular contract applied to the facts of a given case ordinarily determines whether holiday pay should be awarded. In one instance, at least, an arbitrator held that the "last scheduled work day" language in the agreement meant the scheduled workday of the employee designated by the employer.

The Union maintains that neither Herman or Ingersoll attempted to "stretch" the agreed-upon leave by failing to return when scheduled. Both took time off as arranged by their supervisors. Therefore the grievance should be sustained.

County

The County asserts that the language is clear and unequivocal and must be honored. It contends that an arbitrator cannot ignore clear cut contractual language or modify the provisions of the agreement. Pointing to Section 10.6, the County avers that the language on eligibility for holiday pay is clear. It notes that neither grievant worked on January 2, 1991, and that both were on unpaid leave on that date.

According to the County, the grievants have based their contention that they should receive holiday pay in spite of the collective bargaining agreement because they consulted their supervisors and received supervisory approval of the time off. In essence, they are arguing that the terms of the contract and the County's personnel policies are abrogated by securing the supervisor's approval of the leave time.

The County insists that the grievants are trying to read into the collective bargaining agreement some duty on the part of the supervisors to advise employes as to how to best use the system to the employes' advantage. It points out that both grievants completed and signed their time sheets, and that it was the grievants' responsibility to insure that the agreement was followed.

The County asserts that there is nothing in the contract or the testimony adduced at hearing which would support a Union contention that supervisors had authority to waive the terms and conditions of the agreement.

Because there is no real argument as to the underlying facts, the grievance should be denied as nonmeritorious.

DISCUSSION:

While the facts of the instant dispute elicit sympathy from this arbitrator as to how the grievants and their supervisors made such a costly mistake in calculating leave usage due to unfamiliarity with the applicable contractual provisions and it is clear that there was no attempt on the grievants' part to wrongfully "stretch" their vacations; nevertheless, the grievance must be denied.

The undersigned is bound by the clear and unambiguous language set forth in Section 10.6 that an employe "must work the scheduled day before and after the holiday unless absent due to verified illness or on approved paid leave" to be eligible for holiday pay. (Emphasis added) This language is

straightforward and clear. Thus, the undersigned declines to read into this phrase any other qualifying language.

The grievants in this instance unfortunately did not meet the prerequisites for receipt of the holiday pay involved inasmuch as they were both on unpaid leave on January 2, 1991.

Accordingly, it is my decision and award that

The grievants are not entitled to holiday pay for December 31, 1990 and January 1, 1991.

The grievance is denied.

Dated at Madison, Wisconsin this 19th day of July, 1991.

By _____
Mary Jo Schiavoni, Arbitrator