BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL UNION NO. 43	Case 5 No. 45659 A-4774
and	
J. W. PETERS & SONS, INC.	

Appearances:
Mr. George T. Mueller, Secretary-Treasurer, Teamsters Local Union No. 43, on behalf of the Union.
Mr. Richard Lewis, Human Resources Manager, J.W. Peters & Sons, Inc., on behalf of the Company.

ARBITRATION AWARD

Teamsters Local Union No. 43, hereinafter the Union, and J. W. Peters & Sons, Inc., hereinafter the Company, jointly requested that the Wisconsin Employment Relations Commission designate a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. 1/ The undersigned was subsequently designated to arbitrate in the dispute. A hearing was held before the undersigned on July 19, 1991 in Burlington, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted oral argument at the close of the hearing. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to agree on a statement of the issues.

The Union would state the issues as follows:

1) Do all terms and conditions of the Contract apply on restricted work?

2) Does the Company have the right to implement or discontinue the practice at will?

The Company would state the issues as being:

1) Can there be a contract interpretation on this grievance?

2) Is the grievance inaccurate on the facts?

The undersigned concludes that the issues to be decided may be stated as follows:

> Did the Company violate the parties' Agreement when it failed to allow the Grievants, who were on light duty, to work any overtime the two Saturday premium days, January 19 and 26, 1991? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

1/ The parties agreed to waive the thirty-day time limit for the issuance of an award.

The Union cites the following provision of the parties' 1989-92 Agreement:

ARTICLE 6
OVERTIME

. . .

Section 2. For premium day overtime the Company shall post a list on Thursday by noon if possible. Seniority shall be from the top to the bottom and the 50% requirement shall be in force. When additional employees are required for a premium day they shall be notified by noon on Friday or the day prior to the premium day. Any employee who has completed his shift and left the premises prior to noon on the date prior to premium days, such employee shall be obligated to notify the Company before leaving the premises of a place where they may be located if premium day overtime becomes available (the employee is obligated to notify the employer of his whereabouts).

In case premium day overtime becomes available after employees have left the premises notice to these employees shall be by telephone with a steward present (or a unit member in his absence) on paid time as a witness. If the employee does not answer the telephone the Company may proceed to the next employee to make the assignment. Employees who are not in attendance all scheduled work days during the current work week are not entitled to premium day overtime work, but may be assigned said work at the option of the Company in accordance with the requirements of this paragraph.

In the event employees are not in attendance all regular scheduled work days during the current week as a result of absence due to attending a funeral of a member of their immediate family (parents, spouse, children, brother, sister, parents-in-law, brother-in-law, sister-in-law, grandchild, grandparents), illness or jury duty premium day overtime shall be available to these employees. Employees taking vacation and wanting to be available for premium day overtime shall notify the Company in writing before leaving for vacation.

BACKGROUND

Several years ago the Company implemented a light duty program for employes who had been injured on the job and were restricted by their injuries in the work they could perform. The program is on a Monday through Friday basis and the Company does not permit them to work overtime. The five Grievants were all on restricted light duty at the time in question and on two consecutive premium Saturdays, January 19 and 26, 1991, another employe, Don Lee, was permitted to work the premium overtime. There is a dispute as to whether Lee was performing his regular duties although on medical restriction, as the Company contends, or whether he was on light duty, as the Union contends. The Grievants filed the instant grievance over the fact that Lee was permitted to work the premium days and they have not been allowed to work any overtime.

The parties were unable to resolve their dispute and proceeded to arbitration on the grievance before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union asserts that this is a new program of putting employes on light duty due to on-the-job injuries. The Union has never taken the position that the Company must provide work for employes who have been injured on the job or otherwise, but the employes put on light duty are doing bargaining work. The Union contends that the Company has chosen to apply only part of the Agreement as to those employes. They are subject to discipline and the rest of the Agreement, but the Company has not followed their contract rights as to the offering of overtime work. Here, the Company gave Saturday overtime to one employe on light duty and did not offer it to the Grievants. The Union contends that the Company cannot violate the contractual rights of employes it requires to work and who are in danger of losing Worker's Compensation benefits if they do not work.

The Union takes the position that the Company should be required to discuss the light duty program with the Union. As a remedy, the Union requests that all employes on restricted duty who are required by the Company to work or risk losing Worker's Compensation, be entitled to all contractual rights, and that the Grievants be paid equal to what Lee was paid for the days in question and that all employes on light duty be entitled to work overtime on premium days.

Company

The Company asserts that it instituted the light duty program several years ago and that it is beneficial to both the Company and employes. The program has not been a secret for the last few years, and the Union has been free to discuss it, but chose not to, until this grievance. The Company takes the position that there is no provision in the Agreement for the light duty program and questions whether there is anything for the Arbitrator to interpret in that regard. The Agreement only defines the normal work week as forty hours and does not provide that employes on light duty are entitled to overtime work. The Grievants involved were all on light duty, restricted to work that conformed to what was stated on their doctor's slip or their injury. They were "dramatically restricted" in their duties, while the individual who worked on the Saturdays in question, Don Lee, although on a medical restriction, was performing his normal duties Monday through Friday. The Company asserts that to require it to offer employes with limitations prohibiting their performing their normal work duties overtime or Saturday premium time, is to abuse the program. Further, since Lee was not on light duty, as were the Grievants, there is no factual basis for the grievance.

DISCUSSION

While the Company correctly notes that there is no provision in the Agreement expressly addressing the light duty program, this does not foreclose the Arbitrator from determining whether the Company's action violated the terms of the Agreement, such as Article 6, Overtime, which the Union alleges was violated.

Whether the Company violated that provision depends on whether the Company is required to offer employes on light duty, i.e., restricted duty, overtime on the same basis as other employes. It is noted in that regard that there does not appear to be a dispute that the Grievants were restricted from performing their normal duties and were on light duty. It is further noted that in Article 6, Overtime, the parties recognize that the right to overtime work is limited in the sense that the employe must be qualified to do the available work. There is no evidence as to what work was needed on the Saturdays in question, but presumably it was the normal work being performed. Since the Grievants were on light duty and not capable of performing their

normal duties, it would appear they were not qualified to perform the available work. Hence, the Company was not required to offer the Grievants overtime or Saturday premium work.

The Company is not required by the Agreement to create light duty work for the Grievants to perform on an overtime basis just because it has created such work for them during the normal work week. The Grievants claimed that the Company allowed another employe on light duty to work the premium Saturdays, but the only evidence in that regard is the statements of that employe, Lee, and his supervisors that he performed his normal duties during the weeks preceding those Saturdays and had not been assigned light duty. Hence, it is also not a case of treating the Grievants differently from another employe on light duty.

Based on the above and foregoing, the evidence and arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 6th day of November, 1991.

By David E. Shaw /s/
David E. Shaw, Arbitrator