BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL UNION NO. 43	
	Case 6 No. 45660 A-4775
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 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 presented 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.

ISSUE:

The parties agreed on the following statement of the issue to be decided:

> Under Article 6, Section 2, paragraph 3, of the Agreement, what constitutes "all regular scheduled work days during the current week"?

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

CONTRACT PROVISIONS:

The following provisions of the parties' 1989-92 Agreement are cited:

ARTICLE 5
HOURS OF WORK

Section 1. Work Week. (a) The work week is to consist of forty (40) hours, Monday through Friday, and the standard work day shall be eight (8) hours per day.

. . .

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 the 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.

. . .

ARTICLE 7
MANAGEMENT RIGHTS

The employer shall have the right to manage the

business and direct the work forces, to assign employees to work; to determine the number of employees required; to plan, direct and control operations and production schedules; to control raw materials, semi-manufactured and finished parts which may be incorporated in the products manufactured at the location determined by the employer; to introduce new or improved methods, tools, equipment or facilities, and to continue to establish, modify and enforce reasonable rules and regulations; and shall have such other normal and inherent rights of management as are not limited by this Agreement.

The Company retains the right to hire, suspend, discharge, demote, discipline for just cause, transfer and the right to relieve employees from duty because of lack of work provided that in the exercise of these rights the Company will not violate any of the terms of this Agreement.

. . .

ARTICLE 24
HOLIDAYS

Section 1.

. . .

In order to qualify for such holiday pay an employee must have worked the regular schedule work day which immediately precedes and follows the holiday, unless the absence is mutually agreed to in writing. In the event an employee is injured on the job, he shall be entitled to holiday pay as above set forth for all holidays falling within the first six (6) months of absence from work as consequence of such injury. In the event an employee is absent because of illness or off-the-job injury, he shall be entitled to holiday pay as above set forth for all holidays falling within the first thirty (30) calendar days of his absence from work as a consequence of such illness or off-the-job injury. Employees who choose a vacation week in which a holiday occurs shall receive an extra day's pay or an extra days vacation.

. . .

BACKGROUND:

The Grievant, Danie Grisham, had signed up on Thursday, March 21, 1991 to work on Saturday, March 23rd, a premium work day. On Friday the Grievant checked the list of employes scheduled to work on Saturday and noticed he was not on the list, but that employes with less seniority were on the list to work. When the Grievant asked his supervisor why he was not on the list to work on Saturday, he was told that because he went home sick on Monday, March 18th, he was not qualified to work the Saturday premium day. The Grievant did not work Saturday, March 23rd.

The current wording of Article 6, Section 2, of the Agreement was

negotiated four contracts ago. Prior to the current wording, that provision required that illness must be verified by a doctor. That verification was deleted from the contract, however, the parties agreed to the following letter of understanding:

LETTER OF UNDERSTANDING RELATIVE TO ARTICLE VI, SECTION 4 OF THE 1983-1986 LABOR AGREEMENT

> It has been agreed by and between Teamsters Local Union No. 43 and J. W. Peters & Sons that in the event employees who are not in attendance all regular scheduled work days during the current week as a result of illness, verified by a doctor prior to premium day or absence due to attending a funeral of the member's immediate family (parents, spouse, children, brother, sister and parents-in-law) shall be entitled to premium day overtime in accordance to overtime provisions of this Agreement.
>
> Dated this 12th day of October, 1983.

J. W. PETERS & SONS	TEAMSTERS LOCAL UNION NO. 43
By s/Ralph R. Rattray	By s/George Mueller Secretary-Treasurer

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

POSITIONS OF THE PARTIES:

Union:

The Union takes the position that an employe is eligible for premium overtime as long as he comes to work each work day of the workweek, regardless of the number of hours he works each day. The Union notes the current wording of that provision was negotiated four contracts ago and asserts that the Company was concerned about employes in critical classifications not working during the work week. It was not the intent to penalize employes who reported to work, but were unable to stay due to illness, injury or personal problems. With regard to the letter of understanding the Union similarly asserts that the intent was to avoid the manufacture of overtime. With regard to the Company's assertion that it has the right to assign an employe who has been absent to work on a premium day, but that the employe is not entitled to the work, the Union contends that interpretation would allow an employe to miss an entire day of work and still permit the Company to assign the employe to Saturday and Sunday work without the employe proving that he was ill.

The Grievant also asserts on his statement of the grievance that Article 6, Section 2, only requires that an employe must "attend" every work day, and not, as stated in Article 24, Holidays, Section 1, that the employe must have "worked" the work day.

Company:

The Company states its concerns that an award adopting the Union's interpretation of the wording in question would cut into the deep-seated practice of encouraging attendance at the plant. The Union's interpretation would allow an employe to take time off during the week and make up the lost money by working the premium days on the weekend. That was a problem in the past and, as the prior wording requiring verification of illness and the letter of understanding demonstrate, the Union had acknowledged the problem. Removing the verification requirement does not mean the concern is gone.

The Company also contends that Article 5, Section 1, of the Agreement, defines the standard workweek and workday and directly pertains to the use of those terms in Article 6, Section 2. Workweek is defined as forty hours and workday as eight hours in Article 5, Section 1, of the parties' Agreement.

With regard to the assertion that other employes have been allowed to work on a premium day after missing work during the week, the Company asserts that it has the right under Article 6, Section 2, and Article 7, Management Rights, to assign such employes to work at the Company's option, but the employe is not entitled to the work.

DISCUSSION

The parties have stipulated to the issue and in doing so have asked the Arbitrator to tell them what the words "all regular scheduled work days during the current week" means. The essence of their dispute is whether an employe is considered to have been in attendance for the work day if he worked less than a full eight hour day. The parties did not present any witnesses, but did offer as joint exhibits their current Agreement, Grisham's grievance and the Letter of Understanding. It is not indicated on the statement of the grievance how long Grisham worked on the Monday he went home sick and under the respective interpretations it is not relevant as long as he was present some (Union) or it was less than eight hours (Company). The Company mentioned a practice of encouraging attendance, but offered no evidence as to a specific practice or as to a practice expressly on this point.

The wording in dispute is not clear and unambiguous and it therefore is necessary to look to the rest of the Agreement and the purpose of the provision to determine the intended meaning of the words. As the Company notes, the wording includes the term "work days" and the term "work day" is defined in Article 5, Section 1, of the Agreement as "eight (8) hours per day." Presumably, where the parties use a term defined elsewhere in the Agreement, they intend the term to have the same meaning unless there is evidence to the contrary. There is no such evidence in this case.

The Union makes a good argument that a provision with a similar purpose, Article 24, Holidays, Section 1, states the employe "must have worked the regular schedule work day . . .", and Article 6, Section 2, does not use such wording and therefore must mean something different. While that argument has some merit, the Arbitrator is not persuaded it is determinative. The last sentence in Article 6, Section 2, paragraph 2, of the Agreement contains wording almost identical to that in dispute:

> 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.

The evidence indicates that the purpose of the above wording is to encourage employes to work their regular scheduled work days by making their entitlement to premium overtime dependent on their having done so. The apparent intent of Article 6, Section 2, paragraph 3 is to treat employes who are absent due to illness, etc., differently than employes who are absent for reasons not set forth in paragraph 3. Under the Union's interpretation, an employe who leaves work early for reasons other than those set forth in paragraph 3, will presumably be treated the same as the employe who leaves work early due to illness. The purpose and intent of Article 6, Section 2, paragraph 3, then appears to be better served by the Company's interpretation that the words mean the <u>entire</u> work day. The Arbitrator is aware that there could be absurd or harsh results under either party's interpretation and for that reason would suggest that the parties would be well served by addressing the issue in negotiations.

With regard to the argument that the Company has permitted some employes to work premium overtime when they have missed all or part of a work day, the last sentence of Article 6, Section 2, paragraph 2, of the Agreement clearly gives the Company that discretion and that is obviously different than the employe being "entitled" to the premium overtime.

Based on the foregoing, it is concluded that the words "all regular scheduled work days during the current week" mean the employe must be present at work for his entire regular eight hour shift of each regular scheduled work day.

On the basis of the above, the evidence and the arguments of the parties, the undersigned makes and issues the following

<u>AWARD</u>

The grievance is denied.

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

By _____

David E. Shaw, Arbitrator