BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between ALGOMA NET COMPANY (DIVISION OF GLEASON CORPORATION) and UNITED TEXTILE WORKERS OF AMERICA, LOCAL UNION NO. 215 AFL-CIO	Case 16 No. 45671 A-4778

Appearances:

Mr. Norman Boehm, International Vice President, United Textile Workers of America, AFL-CIO, P.O. Box 259, Pulaski, Wisconsin 54162, on behalf of the Union.

Mr. Paul Berkovitz, Plant Manager, Algoma Net Company, P.O. Box 9, 1525 Mueller Street, Algoma, Wisconsin 54201-0009, on behalf of the Company.

ARBITRATION AWARD

According to the terms of the 1989-1992 collective bargaining agreement between Algoma Net Company (Division of Gleason Corporation) (hereafter the Company) and the United Textile Workers of America, Local Union No. 215, AFL-CIO (hereafter the Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving incentive rate pay. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was held at Algoma, Wisconsin on September 5, 1991. No stenographic transcript of the proceedings was made. The parties filed their written briefs herein by September 16, 1991. At the hearing, the parties waived their right to file reply briefs.

ISSUES:

The parties were unable to stipulate to the issues to be decided in this case, but they agreed to allow the undersigned to frame the issues. The Union suggested that the issues be framed as follows:

> Did the Company violate the collective bargaining agreement? If so, what is the appropriate remedy?

The Company suggested that the issues be framed as follows:

> Did the Company violate the collective bargaining agreement by not providing for time to be built into the rates for excessive repairs? If so, what is the appropriate remedy?

Based upon the relevant evidence and argument herein:

> Did the Company violate the collective bargaining agreement or past practice by refusing to preserve Mary Jensen's incentive earnings on March 15, 1991, for the time she spent reworking bags she had sewn which

contained errors attributable to Jensen? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

During the term of the 1989-92 labor agreement, the parties mutually agreed to study and negotiate concerning the Company's incentive rate system. As a result, the following Sections 8 and 9 of Article III were deleted and new language was added to the 1989-92 agreement (as new Sections 8 and 9) effective August 1, 1990:

ARTICLE III
HOURS OF EMPLOYMENT AND OVERTIME

Section 8. It is agreed that the hourly rates of pay shall be as follows:

Periods of Employment	11/1/89 Thru 7/31/90	8/1/90 Thru 10/31/90	11/1/90 Thru 4/30/91	5/1/91 Thru 10/31/91	11/1/91 Thru 10/31/92
DAY WORKER					
Starting Rate	$5.60	-	$5.75	-	$5.90
Two Months	$5.82	-	$5.97	-	$6.12
Six Months	$5.89	-	$6.04	-	$6.19
SPECIAL SKILLED DAY WORKER					
Lead Packer	$6.24	-	$6.39	-	$6.54
Sport Bag Cutter	$6.24	-	$6.39	-	$6.54
Silkscreen Operator	$6.24	-	$6.39	-	$6.54
Rope Machine Operator	$6.24	-	$6.39	-	$6.54
INCENTIVE WORKER					
Training Rate	$4.41	$4.51	$4.66	$4.75	$4.90
Sewer Training Day Rate	-	$5.10	$5.25	$5.34	$5.49
Full Rate	$4.81	$4.91	$5.06	$5.15	$5.30
Sewer Day Rate		$5.50	$5.65	$5.74	$5.89

New hired employees for incentive jobs shall have a sixty (60) calendar day training period and be paid the training rate. The maximum guaranteed rate for incentive workers shall be their incentive base rate.

Workers on the second shift will be paid a 7 cents -

per - hour shift premium.

Workers on the third shift will be paid a 12 cents - per - hour shift premium.

Section 9

A. Incentive rates currently in effect, shall remain in effect for the duration of this Agreement, unless they become inapplicable due to changes in the job such as methods, materials, machines, or quality standards. A list of all permanent rates will be prepared and posted or furnished to Committee members. Until such time that new incentive rates can be determined and applied by the Company on new products, revised production, changes due to methods, materials, machines or quality standards, incentive workers shall receive a special training rate of twenty-five cents (25 cents) per hour in addition to their regular incentive base rate.

B. Incentive System. 100% Premium Plan, One For One, High Task. There is a 10% personal and clean up time built into each incentive rate. There are no other allowances.

All incentive workers shall be governed by the total Agreement with the following exceptions:

C. Base rate of pay. Incentive base/day work base. Incentive base is paid to an incentive worker when they are working on incentive jobs. Day work base is paid to an incentive worker when they are working on non-standard jobs, down time, clean up and other non-incentive type work, when approved by supervisor.
D. The Company shall use established accepted procedure in establishing new rates or in adjusting old rates. Any new rate or adjusted rate shall be tried for a period of thirty (30) calendar days. Should any dispute arise in the above the Union shall follow the "Grievance and Arbitration" procedure of the Agreement beginning with Step 3. Before any dispute is submitted to arbitration, the Company will allow the Union's Industrial Engineer to study the dispute to attempt settlement.

E. An employee(s) incentive earnings, during the normal eight (8) hours, if interrupted by non-incentive work, shall not be jeopardized.

F. All employees must maintain 100% proficiency.

The above-quoted language replaced language that had been in the agreement which read, in relevant part as follows:

Section 8. It is agreed that the hourly rates of pay shall be as follows:

Periods of	11-1-89 thru	11-1-90 thru	11-1-91 thru

Employment	10-31-90	10-31-91	10-31-92
	Day Rate	Day Rate	Day Rate
Starting Rate	$5.60	$5.75	$5.90
Two Months	$5.82	$5.97	$6.12
Six Months	$5.89	$6.04	$6.19

Periods of Employment	11-1-89 thru 10-31-90	11-1-90 thru 10-31-91	11-1-91 thru 10-31-92
	Incentive B.R.	Incentive B.R.	Incentive B.R.
Training Rate	$4.41	$4.56	$4.71
Full Rate	$4.81	$4.96	$5.11

New hired employees for incentive jobs shall have a sixty (60) calendar day training period and be paid the training rate. The maximum guaranteed rate for incentive workers shall be their incentive base rate.

Workers on the second shift will be paid a 7 cents - per - hour shift premium. Workers on the third shift will be paid a 12 cents - per - hour shift premium.

a. The Company has the right to hire people with special skills for day rated jobs at a day rate higher than listed in the contract. (The Company will notify the Union as to whom these employees are and their rate of pay). Special skilled jobs are: Lead Packers, Sport Bag Cutters, Silk Screen Operators and Rope Machine Operators. The rate of pay for these Special Skilled Job Classifications is $6.24 per hour, plus contract increases to be given during the term of this contract. Employees assigned or transferred by the Company to these Special Skilled Jobs shall receive the full rate of the job, provided they perform all duties required on the job.

b. In no event shall the rate paid per hour be less than the then existing minimum hourly wage prescribed by the Federal Wage and Hour Laws.

c. The periods of employment referred to above are to be determined from the seniority date of each individual employee and applied individually.

d. The Sport Bag job classifications are:

Incentive jobs

1) General Sewer

2) Zipper Sewer (on zipper machine only)

3) Beading Sewer

4) Webbing Sewer (on webbing machine only with auto cutoffs)

5) Taper (bags)

6) Box-Tacker (automatic ones only)

7) Bar-Tacker (automatic ones only) and General Sewer

8) Sliders

Day Rate Jobs

1) Cutter - Special Sport Bags (Special)

2) Lead - Packer (Special)

3) Silk Screen Operator (Special)

4) Rope Machine Operator (Special)

5) Janitor

6) Utility (all other day rate jobs)

e. The Hammock and Lounge job classifications are:

1) Taper (Lounge) (incentive)

2) Fringer (incentive)

3) Hemmer (incentive)

4) Pillow Stuffer and Turner (incentive)

5) Stringer (incentive)

6) Pillow Sewer (incentive)

7) Looper and Service (incentive/day)

8) Service (day)

Section 9. Incentive rates currently in effect, shall remain in effect for the duration of this Agreement, unless they become inapplicable due to changes in the job such as methods, materials, machines, or quality standards. A list of all permanent rates will be prepared and posted or furnished to Committee members. Until such time that new incentive rates can be determined and applied by the Company on new products, revised production, changes due to methods, materials, machines or quality standards, incentive workers shall receive a special training rate of twenty-five cents (25 cents) per hour in addition to their regular base rate.

As part of their agreement to insert into the agreement, new Sections 8 and 9 (quoted above), the parties also agreed to delete the following language from old Article III:

> Section 13. The Company shall establish a ONE FOR ONE PREMIUM HIGH TASK INCENTIVE PROGRAM within the first 24 months of this Agreement.
>
> Section 14. Lounge rates to be adjusted by 10% as follows and applied to the General Sewing rates

HAMMOCK/LOUNGE RATE ADJUSTMENT		GENERAL SEWING RATE ADJUSTMENT
1-1-90	-5%	+5%
1-1-91	-3%	+3%
7-1-91	-2%	+2%

FACTS:

On March 15, 1991 incentive rate operator, Mary Jensen worked on an incentive rate job, number 525010, sewing what are known as fanny pack bags on the sporty bag line. On March 15th while Jensen was working on this job number 525010, Jensen's supervisor, Mary Pinchart discovered that Jensen had made some errors in her sewing. Pinchart stated at the instant hearing that she believed Jensen's errors were originally brought to her (Pinchart's) attention by the operator assigned to work on the bags Jensen had completed; that upon Pinchart's investigation of Jensen's flop box (where each operator places completed items before they are given to the next operator for further sewing), Pinchart found more errors made by Jensen in items she had completed. At the time Pinchart discovered and investigated these errors, Jensen was still punched into job number 525010 and she was still working her regular eight hour shift. Pinchart stated that following her investigation, she showed Jensen what was wrong with her work on job number 525010 and Pinchart instructed Jensen to correct the errors at that time. Jensen did this while still working on and punched into job number 525010. According to uncontradicted Company records, Jensen spent 1.5 hours reworking (that is, making the necessary repairs) to the 525010 bags which contained her errors. This time was recorded under job number 290001 by Jensen. Company records submitted here showed that Jensen worked for 4.92 hours on job number 525010 on March 15th. 1/ The Company's records also showed that Jensen was paid her incentive rate of $5.06 per hour for the time she spent working under job numbers 290001 and 525010.

Company Payroll Clerk June Treml testified without contradiction that when an operator makes errors which are discovered and reworked while the operator who made the errors is punched in on the job in question, this rework is paid under the number of that job; and that the pay for this work has traditionally been base rate pay, not incentive rate pay; that Job number 290001 has traditionally been used when the operator who made the sewing errors has punched out of the incentive job on which he/she made the errors and the rework must be performed by a different employe thereafter. Treml also implied that the above represents the Company's past practice regarding rework

---

1/ According to the Company, Jensen had originally recorded 3 hours 42 minutes under Job 525010 and 3 hours under Job 290001 (rework) for March 15th. On March 18th the Company requested Jensen to change the hours she reported as having been spent on jobs 525010 and 290001, as detailed in the body of this Award. The Union did not dispute this point.

pay which was in place both before and after the parties agreed to change the incentive rate system, effective August 1, 1990.

In regard to the facts surrounding the changes made in Article III, Section 9, B. and E. in the effective agreement, the Union proffered only the following evidence. Union President Sue Mencheski stated that she was present at bargaining when the Company proposed both Article III, Section 9, Subsections B. and E. as they now appear in the agreement. Mencheski stated that the Union accepted these provisions as the Company proposed them without counterproposing any amendments thereto. Notably, neither the Union nor the Company proffered any further evidence regarding bargaining history or any evidence regarding what the Company specifically intended these proposals to do within the context of the labor agreement.

Finally, the Company submitted evidence from its Time Study Engineer, Tim McKeough, who stated that in establishing the new incentive rate system, the Company hired a professional industrial engineer (Warren Schmidt) who established the new incentive rate system (to which the Union agreed by its agreement to change Article III 9 B and E). McKeough stated that in creating the new incentive system, Mr. Schmidt did not add any standard allowance for repair time because this could not be done accurately. By including the language "100% premium plan, one for one, high task" in Article III, Section 9 B. and adding that "only a 10% personal and clean up time" would be built into each incentive rate, McKeough stated the Company demonstrated that it intended that there would be "no other allowances" built into the incentive rates for such items as repair or rework time. The Company, however, offered no evidence that this was discussed by the parties or that this was explained by the Company to the Union at bargaining.

<u>POSITIONS OF THE PARTIES</u>:

<u>Union</u>:

The Union here sought backpay for Ms. Jensen but it has admitted that it does not know what amount of pay that might be. (The Union stated the amount of backpay may be as little as $2.00.) The Union contended that the Company added 1.5 hours to Ms. Jensen's incentive hours which reduced her incentive (piece rate) earnings. The Union urged that the new language of Article III Section 9 E. requires the Company to pay incentive rate employes their incentive rate pay for all time spent on incentive rate jobs including all time spent repairing their own sewing errors and that the Company may not reduce incentive earnings by subtracting incentive time from the employe's non-incentive job hours worked as it did in the instant case. This is true the Union asserted, because all witnesses who testified on the point stated that because rework on operator-caused errors is non-incentive work it must be paid at a base rate. For this reason, the Union asserted that Article III, Section 9. D. guarantees that incentive operators must earn their incentive rate and that this rate may not be reduced by work on any non-incentive jobs assigned to them. The Union also implied that because the Company proposed the language of Article III, Section 9, B. and E., this language should be construed in favor of the Union.

In addition, the Union argued that the facts here showed that the rework which Jensen did on March 15th was not "excessive" as the Company claimed: a few bags needed to be reworked and Jensen did so. The Union pointed out that if rework were not a separate job, the Company would not have assigned separate job numbers to rework and it would not have paid for such rework at non-incentive rates in other situations. But here, by proposing Articles III, Section 9 E., the Union contended, the Company clearly intended to guarantee incentive workers their incentive rate for all time spent working in that rate

no matter what non-incentive work the Company assigned them to do which interrupted their incentive rate jobs. The Union therefore sought an order sustaining the grievance and it sought backpay for Ms. Jensen.

Company:

The Company argued that the remedy sought by the Union would place undue burdens on the Company, and that sustaining the Union's arguments here would result in workers who make excessive errors in their sewing receiving incentive bonus money as if they had committed no errors at all. This, the Company contended, was both unfair and unheard of in the industry. The Company asserted that were the Company's approach to be used here, this would result in incentive workers losing incentive earnings if they make errors which are caught and which the worker is ordered to rework while punched in on the job in question. The Company pointed out that both its past practice and the language of the agreement support the above result.

The Company elaborated that the Union's method of remedying the Jensen situation amounted to granting a time allowance for rework on incentive jobs for operators-caused errors which the operator (who is then punched into the job when the errors are discovered) is ordered to rework. The Company asserted that this result was neither intended nor implied by the parties' change in Article III, Section 9. In this regard, the Company asserted that the language of Article III, Section 9, B. clearly showed the parties' intended only to fold a 10% time allowance for personal and clean-up into the new incentive rates. All other items, such as rework, were specifically excluded from this allowance.

In addition, the Company contended that the Article III, Section 9 E. clearly shows the parties intended to preserve incentive pay for incentive workers (who had not made errors) in the situation where the incentive worker works on an incentive job and is then taken off that job and asked to perform non-incentive work. The Company gives the following example: if an employe works four hours on an incentive job and makes bonus money on that job and then works four hours on non-incentive work, the Company cannot calculate the employe's non-incentive hours and his/her incentive hours together so that the employe loses his/her incentive bonus earnings, pursuant to Article III, Section 9, E.

In the instant case, the Company argued that because Jensen was still punched into her incentive rate job (525010) when Supervisor Pinchart found Jensen's errors and ordered her to correct those errors on that job, Jensen was properly paid for all work on that job. This, the Company asserted, was in accordance with past practice and with good engineering standards. The evidence of past practice, the Company pointed out, showed that the Company has consistently paid incentive workers their incentive rate for incentive work; that in the past, incentive workers have not been allowed to punch out of their incentive job and into 290001 in order to correct their own errors made on their own incentive work; and that job number 290001 has traditionally been used by employes for rework found after the employe in error had punched out of the job and a different employe had to rework the items.

In addition, the Company urged that its Time Study Analyst's testimony showed that pursuant to good engineering standards, building a rework time allowance into the Company's incentive rates would have been impractical, inaccurate and contrary to engineering standards. Time Analyst, McKeough, also stated that by its proposal to place new Article III, Section 9 B. and 9 E. in the agreement, the Company did not intend to build a rework allowance into its incentive rates.

The Company asserted that the true intent of Article III, Section 9 E. is to provide employes who justifiably earned incentive wages to keep those earnings even though the employes are sent to non-incentive jobs during their shift/workday through no fault of their own. The Company contended that an absurd result would be reached were the undersigned to rule in favor of the Union on its arguments here: incentive employes would be rewarded for working without regard to quality because they would receive their incentive bonus as well as getting paid again under a different job number to rework their own errors. Based upon these arguments, the Company urged that the grievance be denied and dismissed.

DISCUSSION:

The initial question in this case is whether the labor agreement, on its face, addresses the problem which arose regarding Jensen's incentive pay on March 15, 1991. I note that there is no reference to rework for operator or other errors in Article III of the agreement. However, Article III, Section 9 B. specifically states that only "a 10% personal and clean up time (is) built into each incentive rate. There are no other allowances." This language tends to support the Company's assertions that the parties did not intend to allow incentive workers to rework their own errors and maintain their incentive (bonus) rates. In contrast, Article III, Section 9 E. states that "an employee(s) incentive earnings, during the normal eight (8) hours, if interrupted by non-incentive work, shall not be jeopardized." This language tends to support the Union's arguments in this case that employes should not lose their incentive (bonus) pay when they perform non-incentive work (such as rework).

It is significant that the labor agreement here is silent regarding any definition of rework. In addition, the labor agreement appears to contain internally inconsistent provisions which could apply in this case. In these circumstances then, both past practice and bargaining history are relevant to flesh out the intent of the parties in placing Articles III, Section 9 B. and 9 E. in the agreement.

Regarding bargaining history, neither the Company nor the Union submitted any evidence here to show what, if any, discussions occurred regarding the intended meaning and/or application of the Company-proposed changes in Article III which became effective August 1, 1990. The only evidence submitted

on this point indicated that the Union simply accepted the Company's language without amendment. As no evidence was proffered on the point, it is appropriate in this case for me to presume that the parties never discussed what would happen in the specific circumstances now before me. In addition, I note that between August 1, 1990 and March 15, 1991 there were apparently no difficulties or disputes between the parties regarding the situation that occurred on March 15, 1991. In sum, I find the evidence regarding bargaining history inconclusive to determine the outcome of this case.

In regard to the past practice evidence submitted here, I note the following significant facts were proven. First, the Company proved that it has not been the Company's practice to maintain employes' incentive pay when they rework their own work while on an incentive job; and Job Number 290001 has been reserved for rework done after the employe who committed the errors has punched out of the incentive job. I note that the Union did not dispute these facts in this proceeding. Rather, the Union pointed to Article III, Section 9 E. and asserted that that language provides that incentive workers shall not have their incentive earnings cut under any circumstances when their incentive job hours are interrupted by non-incentive work.

The Union strongly asserted that rework is non-incentive work. On this point, there is some dispute. The Union argued that all rework is non-incentive work. The Company, by its Payroll Clerk, June Treml, contended that only rework discovered after the employe who committed the errors had punched out of the job is assigned a separate job number (such as 290001) and such rework is figured so that the innocent employe who later performs the rework suffers no decrease in his daily incentive base pay. Given this evidence, submitted by the Company, which remained uncontradicted by any hard evidence throughout this proceeding, it is appropriate to conclude that the Union's assertion here that all rework is non-incentive work does not accurately reflect the facts.

Several portions of Article III not discussed above also tend to support the conclusion that the rework performed here was paid properly by the Company under its past practice. For example, Article III, Section 9 B. describes the Company's incentive system as "100% Premium Plan, One for One, High Task." Further, Article III, Section 9 C. indicates that "non-incentive type work" must be "approved by supervisor." Finally, Article III, Section 9 F. states, "all employees must maintain 100% proficiency." This language tends to support the view that quality incentive work was to be performed by incentive employes maintaining "100% proficiency." In this case, I note that Jensen's supervisor directed Jensen to rework her own errors on March 15th while she was punched into Job 525010 without approving Jensen's work as non-incentive work. (It was Jensen who recorded the rework under the Job number 290001).

Finally, I find it significant that Article III, Section 9 B. allows for a 10% personal and clean up time allowance and "no other allowances." Under the basic arbitral principles, the specific language of Article III, Section 9 B. should control over the more general language of Article III, Section 9 E.

In the circumstances of this case and based upon the relevant evidence and argument 2/ herein, I conclude that the grievance herein should be denied

---

2/ Evidence submitted by the Company regarding job engineering standards was not proven on this record to have been known to the Union at the time it agreed to change the language of Article III. Nor did the Company show that such standards were discussed by the parties at negotiations over the incentive system or that they were otherwise commonly known in the industry. Therefore, this evidence was not shown to be relevant to this

and I issue the following

AWARD

The Company did not violate Article III of the collective bargaining agreement or past practice by refusing to preserve Mary Jensen's incentive earnings on March 15, 1991 for the time she spent reworking bags she had sewn which contained errors attributable to Jensen.

Therefore, the grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 25th day of November, 1991.

By ______________________________
Sharon Gallagher Dobish, Arbitrator

---

case and I have not considered it in reaching my decision here.

ms
F6572F.33