

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 MILWAUKEE METROPOLITAN SEWERAGE : Case 264
 DISTRICT : No. 47829
 : MA-7399
 and :
 :
 DISTRICT COUNCIL 48, AFSCME, AFL-CIO, :
 AND ITS AFFILIATED LOCAL 366 :
 :

Appearances:

Mr. Donald L. Schriefer, Senior Staff Attorney, Milwaukee Metropolitan Sewerage Comm
Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, 611 North Broadway, Milwaukee, W

ARBITRATION AWARD

The Milwaukee Metropolitan Sewerage District, hereinafter referred to as the Employer, and District Council 48, AFSCME, AFL-CIO, and its affiliated Local 366, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the payment of milage to an employe. Hearing on the matter was held in Milwaukee, Wisconsin on June 11, 1993. A stenographic transcript of the proceedings was prepared and received by the undersigned on July 12, 1993. Post hearing written arguments were received by the undersigned by December 7, 1993 and the parties informed the undersigned by December 22, 1993 that they would not be filing reply arguments. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

"Did the employer violate the labor agreement when it failed to pay mileage reimbursement for the difference in mileage from the CSO Conveyance Office to the Milwaukee Metropolitan Sewerage District Office from the grievant's place of residence?"

"If so, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

. . .

Schedule A, Section U., Mileage Reimbursement.

. . .

An employe temporarily assigned to a work location other than their normal work location, shall be reimbursed for any automobile milage in excess of mileage to their regular work location. The Lab weekend overtime and Construction Services staff are exempt from this paragraph.

. . .

BACKGROUND

Amongst its various functions the Employer operates a Drafting Department and since October 1, 1979 the Employer has employed Richard Stencel, hereinafter referred to as the grievant, as a Draftsman at its headquarters building (prior to 1989 735 Water Street and after 1989 the headquarters was moved to 260 West Seeboth Avenue). During 1991 the Employer was attempting to scale back its budget and as a cost effective measure it determined to assign one of its Draftsman to work at the CSC Conveyance Office located near Milwaukee County Stadium (approximately 8.2 miles round trip from the headquarters office). This was to be a long term assignment and the employe assigned to the Conveyance Office would work there until a Water Pollution Abatement Program (i.e. deep tunnel project) project was completed. At the time it was thought this would take anywhere from a year to eighteen (18) months. At the time of the hearing the grievant had been located at the Conveyance office for eighteen (18) months and it was believed he would be there at least three (3) more months. Initially the Employer sought volunteers to take this assignment and when no one volunteered the Employer assigned the grievant to the Conveyance office effective January 1, 1992.

Prior to being assigned to the Conveyance office the grievant discussed the matter with his supervisor James Dodge. At the hearing the grievant testified Dodge informed him this was not a permanent assignment, didn't really know the assignment's duration, that it was not permanent and that he would return to the Headquarters office at the completion of the project. 1/ The grievant also testified that his supervisor, in a meeting with him and his union steward, agreed he would be paid mileage. 2/ In February, 1992 the grievant turned in an expense request for mileage reimburse which was disapproved by the grievant's immediate supervisor but denied by the Employer's Director of Engineering on the basis that the grievant's assignment to the Conveyance office was not temporary.

Thereafter the grievant filed the instant grievance and it was processed to arbitration in accordance with the parties grievance procedure.

UNION'S POSITION

1/ Transcript, page 21.

2/ Tr. p. 25.

The Union contends the parties have agreed any employe temporarily assigned to a work location other than their normal work location is entitled to mileage. The Union asserts that the assignment of the grievant to the Conveyance office was not a permanent assignment and was therefore temporary. The Union argues that the work "temporary" has no fixed meaning in the sense that it designates any fixed period of time. The Union stresses that it is a word used in contradistinction to permanent, i.e., if it was not permanent it was temporary. The Union points out that the grievant was initially told by his supervisor that his assignment was a temporary assignment. The Union also points out the grievant raised the issue of mileage and there was an agreement the grievant would receive mileage. The Union argues the Employer acknowledged this during the hearing. 3/ The Union also argues that the Employer was aware at the time the grievant was assigned to the Conveyance office that the job had an end. The Union concludes that the job assignment would end and the grievant would be going back to his normal work location.

The Union would have the Arbitrator sustain the grievance and make the grievant whole by reimbursing him for mileage in excess of mileage to his regular work location. The Union would also have the Arbitrator maintain jurisdiction for ninety (90) days to allow the parties to agree on the amount of payment.

EMPLOYER'S POSITION

The Employer argues that mileage reimbursement is appropriate if an assignment is to a location other than a normal or regular location for an employe and is temporary. The Employer contends that if either of the criteria are not satisfied than mileage reimbursement is inappropriate. The Employer argues that in the instant matter the considered assignment does not satisfy either.

The Employer asserts that the grievant's assignment to the Conveyance office effectuated a break with his normal work location at District Headquarters. The Employer contends that the space he previously worked in was abandoned and he moved lock, stock and barrel to the new office which became his normal and regular place of employment. The Employer points out the grievant took all of his personal equipment with him, he received new office space, the grievant knew he would be at the office for an indefinite, but significant period of time (at least eighteen months), that he had by the time of the hearing worked at the Conveyance office for a longer period of time as a Draftsman II than he had at District Headquarters, and that the grievant would be working at the Conveyance office for at least another three (3) months. The Employer asserts these facts support a conclusion that the Conveyance office became the grievant's normal and regular place of employment after he was transferred there.

The Employer points out that because of budgetary considerations, the only work for the grievant to perform was at the Conveyance office. The Employer argues that this being the case the Conveyance office became his normal and regular work location where he was to work into the indefinite future.

The Employer also points out that in other provisions of the collective bargaining agreement, Appendix A, Section S, paragraphs a and b, provide for temporary actions up to twelve (12) months. The Employer argues this limitation gives evidence to the parties intent that the term "temporary

3/ Tr. p. 40.

assignment" should not cover assignments which exceed one (1) year.

The Employer also argues that as the length of the assignment increases the distinction between a "temporary" and a normal or regular work location starts to blur. The Employer asserts the present matter, lasting already eighteen (18) months with at least another three (3) months of work existing far exceeds the maximum twelve (12) months equated with "temporary" assignments in Section S of Appendix A. This constitutes a period of time sufficiently long in duration that, on the basis time alone (and ignoring other aspects of the transfer), results in the Conveyance office logically being classified as the grievant's normal or regular work location rather than as a "temporary" (i.e. short time) assignment.

The Employer would have the Arbitrator deny the grievance.

DISCUSSION

The record herein demonstrates the grievant was involuntarily assigned to work at the Conveyance office effective January 1, 1992. The grievant's normal place of work was the District Headquarters. It is 8.2 additional miles travel for the grievant to travel to the Conveyance office. The collective bargaining agreement clearly states that an employee temporarily assigned to a work location other than their normal work location shall be reimbursed mileage in excess of mileage to their regular work location. The grievant was not permanently assigned to the Conveyance office. Because the grievant was not permanently assigned to the Conveyance office clearly his assignment was temporary. The Employer argument that a long term assignment or one lasting longer than twelve (12) months negates the mandate of Schedule A, Section U, is not supported by any language in the agreement nor did the Employer present any evidence concerning a practice which would support a conclusion that there are assignments other than temporary or permanent. The Employer does not dispute that the grievant will return to the District Headquarters at the completion of the work at the Conveyance office nor does the Employer dispute that the grievant's normal work location prior to his assignment to the Conveyance office was the District Headquarters.

Based upon the above and foregoing, and the testimony, evidence and arguments presented, the undersigned concludes the Employer therefore violated Schedule A, Section U, when it temporarily assigned the grievant to the Conveyance office and failed to pay the grievant excess mileage because of his assignment to the Conveyance office. The Employer is directed to make the grievant whole by paying the grievant 8.2 miles mileage for each day he has reported to work at the Conveyance office. The grievance is sustained.

AWARD

The Employer violated the labor agreement when it failed to pay mileage reimbursement for the difference in mileage from the CSO Conveyance Office to the Milwaukee Metropolitan Sewerage District Office from the grievant's place of residence. The Employer is directed to pay the grievant 8.2 miles mileage for each day the grievant reported to work at the CSO Conveyance Office.

Dated at Madison, Wisconsin this 7th day of March, 1994.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator