BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL UNION NO. 43	Case 1
	No. 50425
and	A-5169
LLOYD TRANSPORTATION, INC.	

Appearances:

Mr. Jack Lloyd, President, appearing on behalf of Lloyd Transportation, Inc.

Mr. Howard G. Lotharius, Business Representative, Teamsters Local Union No. 43, appearing on behalf of the Union.

ARBITRATION AWARD

On January 31, 1993, Teamsters Local Union No. 43 and Lloyd Transportation, Inc., jointly requested the Wisconsin Employment Relations Commission to appoint a member of its staff to act as the impartial arbitrator involving a dispute over pay for attending a hazardous waste training program. Both parties agreed the matter was appropriately at arbitration and that there were no procedural arbitrability issues. A hearing was held on April 12, 1994, a stenographic transcript of the proceeding was not taken, and the parties orally argued their positions in lieu of filing post-hearing briefs.

ISSUE:

> Did the Company violate the 1991-94 collective bargaining agreement by refusing to pay those employes who attended the March 13, 1993 HM-126F training program held at the Bristol terminal their straight time hourly rate?
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> If so, what is the appropriate remedy?

BACKGROUND:

The Company, Lloyd Transportation, Inc. is a tank truck operator located in Kenosha County and having a terminal called the Bristol terminal. Lloyd Transportation is involved with the transport of hazardous materials.

By October 1, 1993, all drivers, mechanics and wash rack employes working with hazardous materials had to have completed a training program pursuant to the federal DOT HM-126-F regulation. Any employe who did not complete that

training by October 1, 1993, could no longer be employed by Lloyd Transportation to handle hazardous waste materials. The hazardous materials training was available at the Fox Valley Vocational, Technical and Adult Education facility in Appleton, Wisconsin. Teamsters Local Union No. 43 would also have provided training to employes of employers having at least 50 employes. However, the subject grievance concerns a training program that the Company offered at its Bristol terminal for its employes. The Company condensed what was a two-day program at Fox Valley into a one-day program. The program was held on Saturday, March 13, 1993, and the Company furnished lunch to those in attendance. Attendance by Company employes was voluntary, as the training was offered as a convenience to employes.

The Company and Union did not agree, prior to the training, that employes would be paid if they attended. Further, the DOT HM-126-F did not mandate that the employer, in this case Lloyd Transportation, provide the training to its employes. Rather, the regulation only required that anyone employed in the handling of hazardous materials must have completed the specified training program as a condition of their employment.

The grievants who attended the HM-126-F training program held at the Company's Bristol terminal were not paid for the time they spent in training on March 13, 1993. March 13, 1993 was a Saturday and not a scheduled work day for the grievants. On March 17, 1993, the Union filed the subject grievance, which the Company denied. Thereafter, the grievance was submitted to the Wisconsin Joint Committee which deadlocked the grievance. Subsequently, the grievance was appealed to arbitration.

The Union contends that Articles 13.1, 22.1 and 22.8 have been violated because of the Company's failure to pay the grievants for attending the hazardous materials training program. Those articles provide:

> ARTICLE 13. EXAMINATIONS AND IDENTIFICATION FEES
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> Section 13.1
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> Physical, mental or other examinations required by a government body or the Employer shall be promptly complied with by all employees, provided, however, the Employer shall pay for all such examinations. The Employer shall not pay for any time spent in the case of applicants for jobs and shall be responsible to other employees only for time spent at the place of examination or examinations, where the time spent by the employee exceeds two (2) hours, and in that case, only for those hours in excess of said two (2). Examinations are to be taken at the employees's (sic) home terminal and are not to exceed one (1) in any one (1) year unless the employee has suffered serious injury or illness during the year. Employees will not be required to take examinations during their working hours.

In the case of new hires, the applicant will be responsible for the cost of the initial examinations. Once the applicant has been put to work, he will be reimbursed for the cost of the examination within sixty (60) days. Should the applicant voluntarily terminate his employment within sixty (60) days, he shall pay the cost of his physical examinations.

The Employer reserves the right to select its own medical examiner or physician, and the employee may, if he believes an injustive (sic) has been done him, be re-examined at his own expense and by the physician of his choice.

In the event of disagreement between the doctor selected by the Company and the doctor selected by the employee, the Company and the employee doctors shall together select a third doctor within seven (7) days, whose opinion shall be final and binding on the Company, the Union and the employee. The Company, nor the Union, nor the employee will attempt to circumvent the decision. The expense of the third doctor shall be equally divided between the Company and the Union. Disputes concerning back pay shall be subject to the grievance procedure.

The Employer shall make the necessary appointment with the Medical Examiner and shall notify the employee in sufficient time prior to the renewal of the D.O.T. physical. Upon request, the employee shall be allowed a ten (10) hour rest period.

If the Employer or Government Agency requests a regular employee to qualify on equipment requiring a classified or special license, or in the event an employee is required to qualify (recognizing seniority) on such equipment in order to obtain a better job opportunity with his Employer, the Employer shall allow such regular employee the use of the equipment so required in order to take the examination on the employee's own time.

Costs of such license required by a Government Agency will be paid for by the employee.

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ARTICLE 22. PAID-FOR TIME

Section 22.1 General

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Rates of pay provided for by this Agreement shall be minimums. Time shall be computed from the time that the employee is ordered to report for work and registers in and until the time he is effectively released from duty. All time lost due to delays as a result of overloads or certificate violations involving federal, state, or city regulations which occur through

no fault of the driver, shall be paid for. Such payment for driver's time when not driving shall be the hourly rate where driver is hauling on the zone or mileage rate basis.

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Section 22.8

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer except for the following accessorial services:

Compensation for Accessorial Services.

(A) Trailer Spotting

The Drivers required by Employer to spot any trailer(s), in addition to the trailer(s) brought into and pulled out of a customer location or city and its commercial zone as defined by the Commission on the date of execution of this agreement, shall be paid three dollars $3.00) (sic) for each additional trailer (as defined above) spotted. Should the driver be requested to shuttle trailers between a customer's location, then the hourly rate of $10.00 per hour would be in effect in lieu of the $3.00 per trailer.

(B) Loading and Unloading, Multiple Stops and Deliveries

Drivers will be paid $10.00 per hour after the second hour with proof of delay signed by the customer. Should the customer refuse to sign such delay, the driver must call his terminal for further instructions. In the case of loads involving multiple stops, each stop for partial loading or unloading will be considered separately for the purpose of applying this sub-section.

(D) Check Time at Terminals

Home Terminal - Drivers shall be paid one-half (1/2) hour check in and one-half (1/2) hour check out. Anything over one-half (1/2) hour must have signed delay ticket.

Foreign Terminal - Drivers shall be paid one-quarter (1/4) hour check in and one-quarter (1/4) hour check out. Anything over one-quarter (1/4) hour must have signed delay ticket. Driver shall receive an additional one-quarter (1/4) hour when fueling at a foreign terminal. Any time over one-half (1/2) hour must have signed delay ticket.

(E) Tank Washing

Drivers shall be paid $15.00 for each tank wash, successfully completed by a commercial tank wash or Employer's tank wash under the driver's direct supervision and at the direction of Employer. If the driver is held over three hours, he shall be paid at the rate of $10.00 per hour.

The provision of this Article shall not be "pyramided" or otherwise construed to allow drivers to be compensated more than once for the same time spent in the service of the Employer. To collect the compensation for accessorial and other related services provided for by this Section, drivers must work as instructed by the Employer.

Any driver having to appear in court or in the Company's attorney's office in the Employer's behalf, due to an accident, etc. while on the job, shall be paid for all time spent in such service.

There will be no paid for time for any chargeable accidents up to and including eight hours or until the driver is relieved of duty, whichever comes first. If the driver is required to use alternate means of transportation back to the home terminal, driver will not be paid for time spent returning to the home terminal. Driver will be reimbursed for transportation and motel costs if he is required to use his own money.

. . .

The Union believes that because the training session was sponsored by the Company, the Company was contractually obligated to pay employes who attended. The Union also points to the fact that other carriers have paid for employes to attend such training sessions. Specifically, employes of B.M.D. in Michigan were paid for attending a four-hour safety meeting on September 26, 1993, concerning hazardous materials. The Teamsters Central States Chairman also advised the Local 43 Teamsters that all employers covered by the Central States Tank Agreement were paying employes for time spent taking hazardous materials

training. Finally, the Union argues that employers covered by the Teamsters National Master Freight Agreement have also paid employes while attending such training programs.

The Company, on the other hand, argues that it is not a signatory and, therefore, not bound by the provisions of the Central States Tank Agreement or the National Master Freight Agreement. Rather, its obligations are set forth in the collective bargaining agreement it negotiated with Teamsters Local Union No. 43 and pursuant to which this arbitration proceeding is being held. Further, it notes that it was advised by its attorney, contrary to Union assertions, that no agreement was reached between the parties to the Central States Tank Agreement to pay for hazardous material training.

Additionally, the Company asserts that it did not require employes to attend the March 13, 1993 training, but rather, for the employes' convenience, merely made it available to them at the Bristol terminal. Had the Company not done so, those employes would have been required to travel to Appleton and take a two-day course or gone elsewhere for the training in order to continue their employment with Lloyd Transportation after October 1, 1993. Finally, the Company contends none of the clauses relied on by the Union govern this case and, consequently, the grievance should be denied.

DISCUSSION:

One of the Union's principal arguments in support of its claim that employes who attended the March 13, 1993 training session on hazardous materials were entitled to be paid is that Company sponsorship obligated it to pay. The Company does not believe it was obligated to pay employes inasmuch as it did not require them to attend, and merely offered the training at its Bristol terminal as a convenience to drivers who are out of the area on trips Monday through Friday.

However, the undersigned agrees with the Company's general premise that an obligation to pay employes who attended does not automatically follow merely from sponsorship. It is undisputed that the Company did not require its employes to attend, regardless that arguably it was in its interest in maintaining its availability to customers to make sure all of its drivers were employable after October 1, 1993. However, by the same token it was in the employes' interest to obtain the training prior to October 1, 1993, to ensure their continued employability as tank truck drivers hauling hazardous waste. Thus, both employes and the Company had a vested interest in seeing that the training was secured prior to October 1, 1993. However, having that interest does not, by itself, also confer an obligation on the Company to pay for employes' time spent acquiring the training.

Also, even though the undersigned can appreciate a driver's frustration at hearing that other drivers around the country hauling hazardous waste for other companies have been paid for attending company sponsored training sessions, the decision to pay in those cases was not driven by collective

bargaining agreements to which Lloyd Transportation is a signatory. The collective bargaining agreement governing this dispute is between Lloyd Transportation and Teamsters Local Union No. 43. The Central States Tank Truck Agreement governing B.M.D. employes is not applicable to this dispute, nor is the National Master Freight Agreement. Thus, merely because other trucking companies' employes have been paid for time spent in the same training, does not ipso facto create an obligation upon Lloyd to also pay for the March 13 training it offered.

However, the contract at Articles 22.1 and 22.8 does require, as the Union argues, the Company to pay its employes "for all time spent in the service of the Employer." Thus, even though the Company did not require employes to attend the training session, were they nonetheless "in the service of the Employer" on March 13, 1993, while attending the training program, and thus, entitled to be paid? The phrase "in the service of the Employer" is not defined anywhere in the body of the parties' agreement. The plain meaning of those words suggests that one who is in the service of another is performing services for the other. That is the meaning I am ascribing to that phrase in this case where no other definition has been proffered by either party.

Consequently, were the drivers providing a service to the Company by virtue of their attendance at the training session? As noted earlier, I think it can be said the Company had an interest in having all its drivers receive the training prior to October 1, 1993. However, I don't believe that interest is as significant as that of the individual driver in ensuring he/she received the training in order to maintain his/her employability. Thus, to conclude that drivers were "in the service of" the Company while attending the training program is stretching the meaning of those terms beyond credibility. Additionally, in the same paragraph of Article 22.1 it states ". . . Time shall be computed from the time that the employee is ordered to report for work and registers in and until the time he is effectively released from duty." In this case, attendance at the training was voluntary and employes were not ordered to attend. Consequently, neither Article 22.1 nor Article 22.8 can be read to require the Company to pay employes for the hours spent in hazardous materials training on March 13, 1993.

The Union also argued that the Company violated Article 13 by refusing to pay the drivers. I have examined the language of that Article and do not find it applicable to this case. Article 13, Examinations and Identification Fees, pertains to paying employes for their time spent in taking physical or mental examinations and allowing employes' use of special Company equipment required in taking exams. None of the situations described therein apply to individuals attending a training program on handling hazardous waste. Thus, the Company's actions did not violate Article 13.

Therefore, based upon the facts presented, and arguments made, the undersigned renders the following

AWARD

The Company did not violate the 1991-94 collective bargaining agreement by refusing to pay those employes who attended the March 13, 1993 HM-126F training program held at the Bristol terminal their straight time hourly rate, and therefore the grievance is denied.

Dated at Madison, Wisconsin, this 3rd day of June, 1994.

By Thomas L. Yaeger /s/
Thomas L. Yaeger, Arbitrator

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