

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

TEAMSTERS LOCAL UNION NO. 43

and

J.W. PETERS & SONS, INC.

Case 11
No. 51763
A-5302

Appearances:

Mr. Howard G. Lotharius, Representative, Teamsters Local Union No. 43, 1624 Yout Street, Racine, Wisconsin 53404, for the Union.

Mr. Steve McCloskey, Vice President of Manufacturing, and Mr. Richard Lewis, Human Resources Manager, J.W. Peters & Sons, Inc., 34212 West Market Street, Box 160, Burlington, Wisconsin 53105, for the Company.

ARBITRATION AWARD

Teamsters Local Union No. 43, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and J.W. Peters & Sons, Inc. of Burlington, Wisconsin, hereinafter the Company, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement^{1/}. The Company subsequently concurred in the request and the undersigned, William K. Strycker, Commissioner, was designated to arbitrate the dispute. A hearing was held before the undersigned on July 26, 1994 in Burlington, Wisconsin. The hearing was not transcribed and the parties submitted oral arguments at the close of the case. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

Issue:

The parties stipulated to the following statement of the issue:

Was Mr. Baumeister contacted for overtime work in accordance with the contract.

If not, what is the appropriate remedy?

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

Contract Provisions:

The following provisions of the parties' Prestressed Yard Agreement, June 1, 1992 - May 31, 1995, are cited:

. . .

ARTICLE 5
HOURS OF WORK

Section 3. Sunday and Holiday Work. Double the straight time hourly rate shall be paid for all work performed during the calendar day of Sunday and for shifts commencing for work on the holidays established under Article 24.

. . .

ARTICLE 6
OVERTIME

Section 2. For premium day overtime the Company shall post a proposed Saturday work schedule for an entire 30 day period which will be updated each 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 hours on regular scheduled work days during the current work week are not entitled to premium day overtime work.

In the event employees are not in attendance all hours on 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, grandparents in-law), 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:

The Company, located in Burlington, Wisconsin, manufactures prestressed concrete components used in building high-rise parking structures. The Company has serviced contractors in the greater Chicago, Milwaukee and Madison corridors for over 50 years. The Company employs approximately 200 individuals and has three separate agreements with Teamsters Local 43. These agreements include an over-the-road contract, a sand and gravel contract and the instant prestressed yard contract.

Article 6 Overtime of the prestressed yard agreement identifies two types of overtime. Section 1 identifies how overtime is assigned during the week when work extends beyond an eight-hour shift. Section 2 of the overtime article identifies premium day overtime as that which occurs outside of the normal work week. In order to qualify for premium day work, employees must sign a list indicating their desire and availability to work. In filling premium day overtime openings, the Company uses the list and offers opportunities on a seniority basis. The premium day overtime list is posted in lunch rooms. When possible, employees are provided notice of the assignment prior to the conclusion of their normal shift. If this is not possible, the Company is required to contact the employee by telephone with the Union Steward present. If the employee does not answer the telephone the Company may proceed to the next employee to make the assignment. Employees who sign the list are obligated to work on the days they so indicate. Except for specifically identified reasons, premium day overtime is only available for employees who work all scheduled hours during the week preceding the premium day overtime opportunity. The 1989 - 1992 contract provided that the Company, at its option, could assign premium day overtime to individuals who had not worked all scheduled hours in the work week immediately preceding the premium day overtime. During the bargaining over the 1992-95 agreement, the Company's option to assign premium day overtime to employees who had not worked a complete week was eliminated.

The Company has maintained a snow-removal crew list for many years. The maintenance

supervisor develops the list each October by contacting senior qualified employees until the number needed is reached. Sand and gravel employees have the first opportunity with prestressed employees filling remaining needs. Generally the maintenance supervisor will include two extra individuals on the list to ensure that staffing needs are met. Members of the crew must be qualified to run equipment such as skid loaders and front end loaders. The 1993 - 1994 snow removal crew included two sand and gravel employees and the following prestressed yard employees: D. Boulden; William J. Spiegelhoff; H. Koenen; N. Daniels; S. Thuemmler; D. Umnus; William E. Spiegelhoff. J. Baumeister told maintenance supervisor, Wally Schenk, that he was not interested in serving on the snow removal crew when the list was compiled in October of 1993. Steward Tim Wagner, a nine-year employee, testified that he was unaware of the snow removal list.

Burlington, Wisconsin was hit by a significant snowfall over the weekend of February 12th and 13th, 1994. The Company determined that the snow needed to be removed on Sunday so that regular production would be uninterrupted on Monday, February 14, 1994. On Sunday morning, February 13, 1994, maintenance supervisor Schenk reported to the Company offices and began contacting snow removal crew members to report to work. He made these calls without a Union representative present. Although he was not a member of the snow removal crew, Grievant John Baumeister was called by Schenk. Schenk was informed by a woman answering the telephone that Baumeister was not home but out plowing snow. Schenk did not identify himself or the purpose of the call. This contact with a woman at Baumeister's residence is not disputed. The following employees from the snow removal crew worked eight hours, at their double time rate, removing snow: D. Boulden; W. J. Spiegelhoff; H. Koenen; N. Daniels and D. Umnus. These employees did not sign the premium day overtime list. Grievant Baumeister had signed the premium day overtime list for Sunday and had sufficient seniority and qualifications to work.

A grievance was filed on February 15, 1994 asserting that the Company had violated the contract by not having a steward or union representative present when Mr. Baumeister was called. The grievance was denied by the Company thus leading to the instant proceeding.

Positions of the Parties:

Union:

The Union argues that the language is clear that when call-in overtime opportunities occur, a Union steward or unit member should be present. The Union further argues that the maintenance supervisor should have identified himself and the reason for his telephone call. Had this occurred, the woman answering the phone may have been able to contact the grievant so that he could have taken advantage of the overtime opportunity.

Company:

The Company argues that it is undisputed that the call was made. It is acknowledged by the grievant that the call was received and that he was not at home. The Company argues that the oversight of the steward is irrelevant because the contact is undisputed. The Company asserts that a supervisor is not obligated to leave messages when making overtime calls such as this. It is important to make contact with employees as soon as possible. Leaving messages and waiting for return contacts is not required by the contract, nor feasible. The Company further asserts that it was not obligated to contact Baumeister inasmuch as he was not on the snow removal crew. This contact came as a result of the large amount of snow and the conclusion that an additional qualified employee would be helpful.

Discussion:

The contract is clear that when premium day overtime becomes available after employees have left the premises, telephone contacts are to be witnessed by a union steward or representative.

In addition to being a contractual requirement, the procedure ensures that the calls are made properly and verified by the union. This eliminates call-in disputes regarding contact attempts and the resulting double payment exposure. Maintenance supervisor Schenk testified that he did not have a steward or union representative present when he made the telephone calls.

The record substantiates that Schenk contacted the grievant's residence and was informed that he was unavailable because he was out plowing snow. While he did not identify himself or the reason for the call, this is not required by the contract. He did fulfill his obligation by contacting the grievant's residence to determine his availability for overtime.

Based upon the above, the evidence, and the arguments of the parties, the undersigned makes and issues the following.

Award

1. The grievance is sustained. The company violated Article 6, Overtime, Section 2 by failing to have a union steward or representative present when premium day overtime calls were made.
2. The Company shall immediately cease and desist from violating the contract.
3. Because the grievant was not available for premium day overtime when maintenance supervisor Schenk made the undisputed contact with the grievant's residence, he is due any monies.

Dated at Madison, Wisconsin this 20th day of October, 1994.

By William K. Strycker /s/
William K. Strycker, Arbitrator